TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1894.

No. [redacted] 42

THEODORE R. CONVERSE, RECEIVER OF THE MINNESOTA THRESHER MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

CAROLINE A. HAMILTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

FILED APRIL [redacted], 1895.

(21,642.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

No. 211.

IEODORE R. CONVERSE, RECEIVER OF THE MINNESOTA THRESHER MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

CAROLINE A. HAMILTON.

ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

INDEX.

	Original.	Print
t of error	1	1
rn on writ of error	3	2
ion for writ of error	5	2
ion and service	6	3
l on writ of error	8	3
gnment of errors	11	5
er for reversal	15	7
ion to transcript	17	8
script from circuit court for Dade county	18	8
Notice of appeal	18	8
Appeal bond	19	9
Summons and service	21	10
Complaint	22	10
Exhibit A—Order in case of Merchants National Bank of St. Paul *vs.* Minnesota Thresher Mfg. Co., December 22, 1902	43	24
B—Order in case of Merchants National Bank of St. Paul *vs.* Minnesota Thresher Mfg. Co., June 11, 1907	47	26

DD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 30, 1910.

	Original.	Print
Demurrer to complaint	51	28
Amended demurrer	52	28
Opinion on demurrer	53	29
Order sustaining demurrer	55	30
Exception to order sustaining demurrer	56	30
Judgment	57	31
Acceptance of service of notice of appeal	59	31
Clerk's certificate	60	32
Argument and submission	61	32
Judgment	62	33
Opinion	64	33
Dissenting opinion of Timlin, J	68	35
Clerk's certificate	71	37

UNITED STATES OF AMERICA, *ss.*:

he President of the United States of America to the Honorable the Judges of the Supreme Judicial Court of the Commonwealth of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of ie judgment of a plea which is in the said Supreme Judicial Court f the Commonwealth of Wisconsin before you or some of you, being ie highest court of law or equity of the said State in which a de- sion could be had in the said suit between Theodore R. Converse, eceiver of the Minnesota Thresher Manufacturing Company and aroline A. Hamilton wherein was drawn in question the validity of treaty or statute of or an authority exercised under the United tates, and the decision was against the validity, or wherein was rawn in question the validity of a statute of or an authority exer- sed under said State, on the ground of their being repugnant to ie Constitution, treaties or laws of the United States, and the de- sion was in favor of such their validity, or wherein was drawn in uestion the construction of a clause of the Constitution of or a eaty or statute of or commission held under the United States, and ie decision was against the title, right, privilege or exemption, ecially set up or claimed under such clause of the said constitu- on, treaty, statute or commission, a manifest error *had* happened the great damage of the said Theodore R. Converse, Receiver of ie Minnesota Mfg. Co. as by his complaint appears, we being illing that error if any *had* been should be duly corrected and full id speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the upreme Court of the United States together with this writ so that ou have the same at Washington on the 24th day of April next, the said Supreme Court, to be then and there held, that the record d proceedings aforesaid being inspected, the said Supreme Court ay cause further to be done therein to correct that error, what of ght and according to the laws and customs of the United States ould be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the d Supreme Court the 26th day of March in the year of our Lord, 09.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin, Madison.]

F. W. OAKLEY,
Clerk of the United States Circuit Court,
Western District of Wisconsin,
By F. D. REED, *Deputy.*

Allowed by

—— ——, *Justice.*

1—211

3 STATE OF WISCONSIN,
Supreme Court, ss:

The return to the within writ appears by the schedule hereto annexed.

The return of the Justices of the Supreme Court of the State of Wisconsin.

CLARENCE KELLOGG, *Clerk.*

4 [Endorsed:] State of Wisconsin. In Supreme Court. Theodore Converse, Receiver of the Minnesota Thresher Mfg. Co., Plaintiff & Appellant, vs. Caroline A. Hamilton, Defendant & Respondent. Filed Mar. 26, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis. Writ of Error.

5 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Mfg. Co., Plaintiff & Appellant,

vs.

CAROLINE A. HAMILTON, Defendant & Respondent.

The Appellant in the above entitled cause feeling *itself* aggrieved by the Judgment of the said Court entered on the 10th day of November, 1908, comes now by Jones & Schubring and Davis, Kellogg & Severance, his attorneys, and petitions said Court for an order allowing said appellant to prosecute a writ of error to the Honorable the Supreme Court of the United States under and according to the Laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the appellant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in said action be suspended and stayed until the determination of said writ of error by the United — Supreme Court, and that said judgment be reversed.

And your petitioner will forever pray.

JONES & SCHUBRING AND
DAVIS, KELLOGG & SEVERANCE,
Att'ys for Appellant.

To the Honorable John B. Winslow, Chief Justice of the Supreme Court of Wisconsin.

5¼ The writ of error above prayed for is hereby allowed.

Let the plaintiff in error give an undertaking in the sum of one thousand — and upon the filing of such undertaking let proceedings be stayed in this Court.

Dated Jan. 13, 1909.

JNO. B. WINSLOW,
Chief Justice, Wisconsin.

5½ [Endorsed:] State of Wisconsin. In Supreme Court. Theodore Converse, Receiver of the Minnesota Thresher Mfg. Co., Plaintiff & Appellant, vs. Caroline A. Hamilton. Petition for Writ of Error. Filed Jan. 13, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis.

6 UNITED STATES OF AMERICA, *ss:*

To Caroline Hamilton, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Wisconsin, wherein Theodore R. Converse, Receiver of Minnesota Thresher Mfg. Co., is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment and decree rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the chief justice of the Supreme Court of the State of Wisconsin, this 26" day of March, 1909.

R. D. MARSHALL,
Acting Chief Justice of the Supreme Court of the State of Wisconsin, the Chief Justice Being Absent.

Received copy of within citation this 29th day of March, 1909.
SANBORN & BLAKE,
Att'ys for Caroline Hamilton.

7 [Endorsed:] State of Wisconsin. Supreme Court. Theodore R. Converse, Receiver Minn. Thresher Mfg. Co., Plaintiff, v. Caroline A. Hamilton, Defendant. Citation. Filed Mar. 26, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis.

8 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff and Appellant,
vs.
CAROLINE A. HAMILTON, Defendant and Respondent.

Know all men by these presents, that we, Theodore R. Converse, Receiver of the Minnesota Thresher Mfg. Co. as principal, and National Surety Company of New York, as surety, are held and firmly bound unto Caroline A. Hamilton, defendant above named, in the sum of $1000 *dollars*, to be paid to the said Caroline A. Hamilton, her executors or administrators, to which payment well and truly to

be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated the 22nd day of March, 1909.

Whereas, the above named plaintiff, Theodore R. Converse, receiver of the Minnesota Thresher Manufacturing Company, has sued out a writ of error to the United States Supreme Court to reverse the judgment in the above entitled cause by the Supreme Court of the State of Wisconsin.

Now, therefore, the condition of this obligation is such that if the above named Theodore R. Converse, Receiver of the Minnesota Thresher Manufacturing Company shall prosecute said writ to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THEODORE R. CONVERSE, [SEAL.]
As Receiver of Minnesota Thresher Manufacturing Co.

[SEAL.] NATIONAL SURETY COMPANY,
By C. M. BEND, *Its Attorney in Fact.*

C. W. G. WITHEE,
FRED DESCH,
As to T. R. C.
H. W. ENDGERTON,
D. I. YORK,
As to Surety.

9 STATE OF MINNESOTA,
County of Ramsey, ss:

On this 22nd day of March, A. D. 1909, before me appeared C. M. Bend, to me personally known, who being by me duly sworn, did say that he is the attorney in fact of the National Surety Company, the corporation described in and who executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said C. M. Bend acknowledged said instrument to be the free act and deed of said corporation.

DANIEL I. YORK,
Notary Public, Ramsey County, Minnesota.

My Commission Expires August 25th, 1915.

10 STATE OF WISCONSIN,
Department of Insurance:

The National Surety Company, located at New York, in the state of New York, having furnished to the undersigned Commissioner of Insurance due proof of its possessing the qualifications required by

the laws of the state of Wisconsin relating to Surety Corporations, and having complied with said laws,

Now, therefore, This is to Certify that said company has qualified and is authorized to transact within this state the business of a surety-ship corporation under the Statutes of this State until the first day of March, A. D. 1910, unless this certificate be sooner revoked.

Witness my hand and official seal at Madison, Wisconsin, this first day of March, A. D. 1909.

[SEAL.]

GEO. E. BEEDLE,
Commissioner of Insurance.

I, George E. Beedle, Commissioner of Insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 34 issued to the National Surety Company and on file in this department, and that the same is a true copy of said original and of the whole thereof.

Witness my hand and official seal at Madison, Wisconsin, this twentieth day of March, A. D. 1909.

[SEAL.]

GEO. E. BEEDLE,
Commissioner of Insurance.

[Endorsed:] (Copy.) State of Wisconsin. In Supreme Court. Theodore R. Converse, Receiver, etc., vs. Caroline A. Hamilton. This bond is hereby approved as to form and amount. R. D. Marshall, Justice of the Supreme Court, Acting as Chief Justice, the latter being absent. Bond on Writ of Error. Filed March 26, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis.

11 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff & Appellant,

vs.

CAROLINE A. HAMILTON, Defendant & Respondent.

Now comes the plaintiff Theodore R. Converse, Receiver of the Minnesota Thresher Manufacturing Company, in the above entitled action, and in connection with his petition for a writ of error makes the following assignment of errors, and avers that in the record and proceedings in said action, and in the judgment therein, there is manifest error to the great damage of the plaintiff in this, to-wit:

First. That the Supreme Court of the State of Wisconsin erred in determining that the plaintiff's complaint therein stated no cause of action and in refusing to reverse the judgment rendered in the defendant's favor in the Circuit Court of Dane County, Wisconsin, determining that said complaint stated no facts sufficient to constitute a cause of action.

Second. That the Supreme Court of the State of Wisconsin erred in determining that the opinion in the case of Hunt v. Whewell,

122 Wis. 33, in any way ruled this case, and in finding that as t
said Supreme Court of the State of Wisconsin said decision was sta
decisis as to all questions involved until a higher tribunal shoul
reach a different conclusion.

12 Third. That the Supreme Court of the State of Wisconsi
erred in determining that the question of comity was n
involved or in any way passed upon in the case of Bernheimer
Converse, 206 U. S. 516, and that the said Bernheimer case was not i
conflict with said decision in Hunt v. Whewell, 122 Wis. 33.

Fourth. That the Supreme Court of the State of Wisconsin erre
in failing to find that Chapter 272 of the General Laws of 1899,
Minnesota and sections 3184-3190 of the Revised Laws of 1905,
Minnesota both declare that assessments levied pursuant to the
provisions are conclusive upon stockholders wherever they may be.

Fifth. That the Supreme Court of the State of Wisconsin erred i
failing to find that the representation which the defendant stoc
holder had by virtue of his membership in the said corporation wa
all that he was entitled to.

Sixth. That the Supreme Court of the State of Wisconsin erred i
failing to find that the property of the defendant was not taken with
out due process of law under said proceedings under Chapter 272
the General Laws of Minnesota for 1899, and Sections 3184 to 319
inclusive Revised Laws of 1895 of Minnesota.

Seventh. That the Supreme Court of the State of Wisconsin erre
in finding in effect that it is the settled judicial policy of the State
Wisconsin that a Minnesota receiver may not use the courts of th
state to enforce such a liability as that upon which plaintiff's cau
of action is grounded and that the adoption of this policy is a questio
exclusively for the courts of this state to decide.

Eighth. That the Supreme Court of the State of Wisconsin erre
in failing to find that an absolute right existed in the plaintiff to r
cover upon an assessment which was made by said interlocuto
decree duly rendered by the Courts of the State of Minnesota i
an action in which the defendant was represented by the co

13 poration, and an action in which the Minnesota court ha
jurisdiction of the defendant to the extent necessary to mak
such interlocutory decree.

Ninth. The said Supreme Court erred in failing to find that it
not open to the Courts of this State to decide whether under the do
trine of comity between states it will permit such an action as the o
at bar to be pursued.

Tenth. The Supreme Court of the State of Wisconsin erred i
failing to find that the liability of stockholders though statutory i
origin is contractual in its nature, and that under the statute the cau
of action is transitory and can be maintained in any tribunal havi
jurisdiction, where process could be served on the individual stoc
holder.

Eleventh. The Supreme Court of the State of Wisconsin erred i
failing to find that Section 1, Article 4 of the Constitution of t
United States should control the rulings of the State Court of Wisco
sin in which the foreign receiver brings his action to enforce a jud

ment in favor of such receiver and against such defendant, and that this Court should give the orders and decrees of the Court of Minnesota the same force said orders and decrees would have in that state.

Twelfth. That the Supreme Court of the State of Wisconsin erred in failing to find that the said orders and decrees above mentioned by the Courts in the State of Minnesota were final and conclusive on the questions involved in said suit.

Thirteenth. That the Supreme Court of the State of Wisconsin erred in failing to find that said Receiver had the same right to sue in the courts of Wisconsin as any citizen of another State having title as Trustee.

13½ Fourteenth. That the Supreme Court of the State of Wisconsin erred in denying the said orders and judgments of said Minnesota Court the efficacy to which they were entitled in the State of Minnesota, and therefore failed to give full faith and credit to said judicial proceedings within the meaning of the Constitution of the United States.

And said plaintiff prays that said judgment may be reversed and held for naught.

THEODORE R. CONVERSE,
Receiver of Minnesota Thresher Manufacturing Co.,
By JONES & SCHUBRING AND
DAVIS, KELLOGG & SEVERANCE,
Attorneys for Appellant.

14 [Endorsed:] State of Wis. Supreme Court. Theo. R. Converse Receiver of Minn. Thresher Mfg. Co. Plaintiff v. Caroline A Hamilton, Defendant. Assignment of Error. Filed Jan. 13, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis.

15 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Mfg. Co., Plaintiff & Appellant,
vs.
CAROLINE A. HAMILTON, Defendant & Respondent.

The plaintiff above named having applied for a writ of error to review in the Supreme Court of the United States the judgment in the said Supreme Court of the State of Wisconsin rendered against it in this cause, and having filed an assignment of error, hereby prays that said judgment be reversed, annulled and held for naught, and that it may be restored to all things which it has lost by occasion of said judgment.

THEODORE CONVERSE,
Receiver of Minnesota Thresher Manufacturing Co.,
By JONES & SCHUBRING, *Attorneys.*

16 [Endorsed:] State of Wisconsin. Supreme Court. Theodore R. Converse, Receiver Minn. Thresher Mfg. Co., Plaintiff, vs. Caroline A. Hamilton, Defendant. Prayer for Reversal. Filed Jan. 13, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis.

17 Pleas before the Supreme Court of the State of Wisconsin, at a term thereof begun and held at the Capitol, in Madison, the seat of government of said State, on the second Tuesday, to-wit, the eleventh day of August, A. D. 1908.

Present:

John B. Winslow, Chief Justice.
Roujet D. Marshall, Joshua Eric Dodge, Robert G. Siebecker, James C. Kerwin, William H. Timlin, John Barnes, Justices.
Clarence Kellogg, Clerk.

Be it remembered that heretofore, to-wit: on the eleventh day of July, in the year of our Lord one thousand nine hundred and eight, came into the office of the Clerk of the Supreme Court of the State of Wisconsin, Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Company, and filed in said court his certain notice of appeal and undertaking on appeal, according to the statute in such case made and provided, and also the return to such appeal of the clerk of the circuit court of Dane county, in said state, in the words and figures following, that is to say:

18 STATE OF WISCONSIN:

In Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Mfg. Co., Plaintiff,

vs.

CAROLINE A. HAMILTON, Defendant.

To Sanborn & Blake, Attorneys for Defendant, and to Lawrence Larson, Clerk of the aforesaid court:

Please take notice that the plaintiff above named hereby appeals to the Supreme Court of the State of Wisconsin from the judgment rendered by the above named court herein entered on the 10th day of July, 1908, in favor of the defendant and against the plaintiff dismissing the complaint of the plaintiff herein, and for the sum of $36.57 costs, and from the whole thereof.

JONES & SCHUBRING,
C. A. SEVERANCE,
Attorneys for Plaintiff.

Dated July 11, 1908.

(*Endorsements:*)

Circuit Court, Dane County, Wis. Filed Jul- 11, 1908, Lawrence O. Larson, Clerk.

19 STATE OF WISCONSIN,
Department of Insurance:

The National Surety Company, located at New York in the State of New York having furnished to the undersigned Commissioner of Insurance due proof of its possessing the qualifications required by the laws of the State of Wisconsin relating to suretyship corporations, and having complied with said laws,

Now, Therefore, This is to Certify that said company, has qualified and is authorized to transact within this state the business of a suretyship corporation under the Statutes of this State until the first day of March, A. D. 1909, unless this certificate be sooner revoked.

Witness my hand and official seal at Madison, Wisconsin, this 28 day of February, A. D. 1908.

[SEAL.]

GEO. E. BEEDLE,
Commissioner of Insurance.

I, Geo. E. Beedle, Commissioner of Insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 25 issued to the National Surety Company, and on file in this department, and that the same is a true copy of said original and of the whole thereof.

Witness my hand and official seal at Madison, Wisconsin, this 11 day of July, A. D. 1908.

[SEAL.]

GEO. E. BEEDLE,
Commissioner of Insurance.

(Endorsement:) Filed July 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

20 STATE OF WISCONSIN:

In Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Mfg. Co., Plaintiff,

vs.

CAROLINE A. HAMILTON, Defendant.

Whereas on the 10th day of July, 1908, in the Circuit Court within and for the County of Dane, the above named defendant recovered judgment against the above named plaintiff dismissing the complaint of the plaintiff herein, and for the sum of $36.57, costs, and the above named plaintiff Theodore R. Converse, as Receiver of the Minnesota Thresher Mfg. Co., feeling aggrieved thereby intends to appeal therefrom to the Supreme Court of the State of Wisconsin,

Now therefore the National Surety Company, a corporation does hereby undertake that the said appellant will pay all costs and

damages which may be awarded against it on said appeal, not exceeding $250.

Dated this 11th day of July, 1908.

NATIONAL SURETY COMPANY,
By W. J. McKAY, *Agent.*
RUFUS B. SMITH,
Consulting Attorney.

[SEAL.]

21 STATE OF WISCONSIN:

In Dane County Circuit Court.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Co., Plaintiff,
vs.
CAROLINE A. HAMILTON, Defendant.

The State of Wisconsin to the said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint.

Dated this 12th day of August, 1907.

JONES & SCHUBRING,
Plaintiff's Attorneys.

P. O. Address, Madison, Dane Co., Wis.
C. A. SEVERANCE, *Of Counsel.*

(Endorsements:) State of Wisconsin, Circuit Court, Dane County. Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Co., Plaintiff, vs. Caroline A. Hamilton, Defendant. Summons. Service of a copy of the within summons admitted this 12th day of August, 1907. Sanborn & Blake, Attorneys for Defendant. Jones & Schubring, Badger Block, Madison, Wisconsin, Plaintiff's Attorneys. Circuit Court, Dane County, Filed May 8, 1908, Lawrence O. Larson, Clerk. Filed July 11, 1908, Clarence Kellogg, Clerk of Supreme Court, Wis.

22 STATE OF WISCONSIN:

In Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,
vs.
CAROLINE A. HAMILTON, Defendant.

And now comes the plaintiff and for a first cause of action against said defendant alleges:

That on or about the 26th day of November, A. D. 1884, the Minnesota Thresher Manufacturing Company was duly incorporated in

the State of Minnesota, under and pursuant to the provisions of the constitution and laws of said state; that ever since said date said corporation has continued to be and now is a body corporate, organized, created and existing under and by virtue of the constitution and laws of said state; and that said corporation is, and at all times has been a citizen and resident of the state of Minnesota; that Theodore R. Converse, the above named plaintiff, is and since a long period prior to his appointment as receiver of the Minnesota Thresher Manufacturing Company has been a resident and citizen of the State of Minnesota and the defendant is and for more than one year last past has been a resident and citizen of the State of Wisconsin.

That the articles of incorporation of said Minnesota Thresher Manufacturing Company (hereinafter called the Thresher Company) provided that the objects for which said corporation
23 was formed were the purchase of the capital stock, evidences of indebtedness issued by and the assets of the Northwestern Manufacturing and Car Company, a corporation existing under the laws of the State of Minnesota, or any portion of said capital stock, evidences of indebtedness or assets, and the manufacture and sale of steam engines, and all kinds of farm implements, machinery of all kinds, and the manufacture and sale of all articles, implements and machinery, of which wood and iron, or either of them, form the principal component parts, and the manufacture of materials therein, used with a principal place of business at the city of St. Paul, in the county of Ramsey, in said State of Minnesota, which afterwards by amendment to said articles of incorporation, duly made, was changed to the City of Stillwater, in the county of Washington, in said State of Minnesota; that after its incorporation as aforesaid said Thresher Company engaged in and carried on at said St. Paul and at said Stillwater all the classes of business authorized by said articles of incorporation; that said articles of incorporation have never been in any way altered, amended or modified, except as aforesaid.

That the capital stock of said Thresher Company as provided and authorized by said Articles of Incorporation was the sum of seven million dollars ($7,000,000) divided into one hundred and forty thousand (140,000) shares of the par value of fifty dollars ($50) each; that the said stock was divided into two classes, denominated preferred and common stock, the amount of said preferred stock so authorized was the sum of four million dollars ($4,000,000), or eighty thousand (80,000) shares of the par value of fifty dollars ($50.00) each, and the amount of said common stock so authorized was the sum of three million dollars ($3,000,000), or sixty thousand shares of fifty dollars ($50) each, of which said preferred stock there have been issued and are now outstanding twenty-seven thousand nine hundred and sixty-seven (27,967) shares, and that of
24 the common stock of said corporation there have been issued and are now outstanding forty-two thousand five hundred and ninety-four (42,594) shares.

That the Merchants National Bank of St. Paul, Minnesota, is and during all the times hereinafter stated has been, a banking corpora-

tion organized and existing under the laws of the United States of America, having its place of business at the City of St. Paul, in the State of Minnesota; that on the 6th day of May, A. D. 1901, the said Thresher Company was indebted to said Merchants National Bank of St. Paul, Minnesota, in the sum of two thousand nine hundred and thirty-six dollars and seven cents ($2,936.07); that prior thereto an action had been duly commenced in the District Court for Ramsey County, Minnesota, in which the said bank was the plaintiff and said Thresher Company was the defendant, of which said cause said Court, which was a court of general jurisdiction and of record, had acquired jurisdiction of both of the parties and of the subject-matter thereof, and on the 6th day of May, 1901, judgment was duly entered and docketed in said Court in favor of said Merchants National Bank of St. Paul, Minnesota, said plaintiff, and against said Thresher Company, for two thousand nine hundred and thirty-six dollars and seven cents ($2,936.07) which said judgment has never, either in whole or in part, been paid or satisfied. That thereafter an execution directed to the Sheriff of said Ramsay County, was duly issued and delivered to said Sheriff, who made return thereon that, after diligent search and inquiry, he was unable to find any property of said Thresher Company in his said county, and hence returned said execution wholly unsatisfied; that a certain other execution was duly issued out of said Court upon said judgment directed to the Sheriff of said Washington County, and that said Sheriff duly returned that, after diligent search and inquiry, he was unable to find any property of said defendant in his said county, and hence returned said execution wholly unsatisfied.

That at the time said judgment was entered and said execution was issued and returned as aforesaid, and for a long time prior thereto, and at all times thereafter, said Thresher Company was, and now is, wholly insolvent and without any assets or property whatsoever, other than the liability of its stockholders as hereinafter set forth.

That after the return of said executions as aforesaid, and on or about the 15th day of August, 1901, said Merchants National Bank, as a judgment creditor of said Thresher Company, duly instituted and commenced in the District Court for the said County of Washington and state of Minnesota, which said Court was then and there a Court of record and of general jurisdiction, an action against said Thresher Company under and pursuant to the provisions of Chapter 76 of the General Statutes of the State of Minnesota, and the acts amendatory thereof and supplementary thereto, for the sequestration of the stock, property, things in action and the effects of the said Thresher Company, and for the appointment of a Receiver for the same; that said Thresher Company was duly and personally served with summons and process in said action, and on or about the 16th day of August, 1901, duly appeared in said action by its duly authorized attorney.

That on the said 16th day of August, 1901, judgment was duly given, rendered and entered in and by said Court in said action, adjudging that the stock, property, things in action and effects of

said Thresher Company be sequestered, and that a Receiver therefor be appointed; that such judgment has never been appealed from nor in any manner modified, reversed or set aside.

That on the 16th day of August, 1901, such proceedings were duly had that this plaintiff, Theodore R. Converse, was by said District Court for Washington County, Minnesota, in said cause, duly appointed Receiver of all the property, assets, rights and interests of said Thresher Company of every sort or nature, either in law or in equity, and with full authority and direction to sue for, collect, recover, compromise or settle any and all stockholders'
26 liability that may exist under the constitution and laws of the State of Minnesota, or otherwise, and to prosecute and sue for the amount of such liability, or any assessment that might be made by said Court on account thereof for the satisfaction of the claims of the creditors of said Thresher Company, and all expenses of administration of said trust, including fees, allowances, expenses of said Receiver and his counsel, and with full power and authority to sue for and enforce the collection of any assessment or stockholders' liability, either in the courts of the State of Minnesota or the courts of any other State or Territory, or the courts of the United States sitting in any State or Territory of the United States, and with full power and authority to prosecute appeals or sue out writs of error in any such suits or cases that may be so instituted by said Receiver for the collection of such assessments or stockholders' liability, and in general to do and perform all acts that in the opinion of said Receiver, or that he might be advised, were needful or proper for the enforcement and collection of such assessments and stockholders' liability in any of the courts of the United States, or the various States and Territories of the United States; and said Receiver was further directed to seize and take into his possession, sue for and recover any and all property of every sort and nature possessed by said corporation.

That the plaintiff duly gave the bond required of him as such Receiver, by said order, which bond was duly approved by one of the Judges of said Court and duly filed in said action; and that the plaintiff duly qualified as such Receiver and entered upon the performance of his duties as such Receiver, and ever since has acted, and now is acting, as such.

That thereafter, according to and in pursuance of the laws of the State of Minnesota, such proceedings were had in said last-mentioned action, that an order of said District Court of said Washington County was made and entered therein on the 3rd day of September, 1901, authorizing and requiring the creditors of said Thresher Company to become parties to said action, and to
27 appear and exhibit therein their claims against said Thresher Company. That immediately after the entry of said order, the said order was duly published as required therein, and certain creditors of said Thresher Company duly became parties to said action as intervenors therein, and duly exhibited therein their claims and demands against said Thresher Company, and proved the same, and after hearing duly had in said action, said claims of

such creditors were duly allowed to the amount of four hundred and forty-three thousand seven hundred and fifty-two dollars and seventeen cents ($443,752.17).

That at the time of the organization and incorporation of said Thresher Company, and at all times hereafter, during its corporate existence, and at the time when, and at all times since, the said defendant Caroline A. Hamilton became a stockholder in said Thresher Company, as hereinafter alleged, it was provided in and by the constitution and general laws of the State of Minnesota, pursuant to which said corporation was organized and incorporated, that each and every stockholder of said corporation severally agreed to assume and did assume liability for the indebtedness of said corporation in case of deficiency or insufficiency of corporate assets to liquidate such indebtedness, to the amount of the par value of his stock; and further agreed, in case of such deficiency, to pay and contribute for the equal benefit of the creditors of such corporation such amount, not exceeding the par value of the stock held by such stockholder, as might be required to make up such deficiency. That under said constitution and general laws, and the decisions of the Supreme Court of the State of Minnesota and the Supreme Court of the United States construing and interpreting the same, said agreement and undertaking on the part of the stockholders is contractual and transitory, and runs to and is enforceable for the corporate creditors by the Receiver of the corporation, and that the same is enforceable by such Receiver in any jurisdiction whereof jurisdiction of stockholders may be obtained; and that said contract and agreement, on
28 the part of the stockholders, grows out of and follows the subscription to or acquisition of the corporate stock, wherein and whereby each stockholder guarantees the payment of all corporation indebtedness contracted, created or existing while such stock is held by him, and to the amount of his stock as aforesaid. And the said defendant, when she accepted the stock of said corporation now owned and held by her as hereinafter set forth, accepted the said provisions of the constitution and laws of Minnesota in relation thereto, and agreed to assume and pay the indebtedness of said corporation to the extent of the par value of the stock owned or held by him therein, or so much thereof as might be necessary for the payment of such indebtedness. And under the constitution and laws of Minnesota, the liability of said defendant upon her agreement aforesaid was and is an asset of said corporation.

That on the 16th day of August, 1901, and for a long time prior thereto, and while the provisions of the constitution and laws of the State of Minnesota as aforesaid remained in full force and effect, the above named defendant was the lawful owner and holder, and had duly and lawfully acquired, subject to the liability and agreement aforesaid twenty-one (21) shares of the capital stock of said Thresher Company of the aggregate par value of one thousand and fifty ($1,050.00) dollars, and that the said shares of stock were duly and lawfully issued to, and received and accepted by, said defendant; that said defendant has never parted with or transferred any portion of said stock, but has at all times since

the issue thereof to her as aforesaid, continued to be and now is the owner and holder of the same, and of all thereof, and so appears by the books and records of said Thresher Company.

That at the time said defendant so became the owner and holder of said shares of the capital stock of said Thresher Company, the provisions of the constitution and laws of the State of Minnesota hereinbefore set forth, were in full force and effect, and became a part of defendant's contract of purchase and ownership of said shares of stock; and said defendant in and by the purchase and ownership and holding of said shares of said stock of said
29 Thresher Company as aforesaid, duly contracted, became obligated and agreed for a valuable consideration that she would be and remain responsible with the other stockholders of said company for all contracts, debts and engagements of said company while she remained such stockholder, to the amount of her stock therein, at the par value thereof, to-wit, to the amount of one thousand fifty dollars ($1,050).

That it is provided by the laws of the State of Minnesota as follows:

General Laws of Minnesota for 1899.

Chapter 272.

An Act to Provide for the Better Enforcement of the Liability of Stockholders of Corporations.

SECTION 1. Whenever any corporation created or existing by or under the laws of the State of Minnesota, whose stockholders or any of them, are liable to it or to its creditors, or for the benefit of its creditors, upon or on account of any liability for or upon or growing out of, or in respect to the stock or shares at any time held or owned by such stockholders, respectively, whether under or by virtue of the constitution and laws of said State of Minnesota, or any Statute of said State, or otherwise, as heretofore made or shall hereafter make an assignment for the benefit of its creditors under the insolvency laws of this State; or whenever a Receiver for any such corporation has heretofore been or shall hereafter be appointed by any District Court of this State, whether under or pursuant to any of the provisions of Chapter seventy-six (76) of the General Statutes of eighteen hundred and ninety-four (1894) of Minnesota, and the acts amendatory thereof, or under or pursuant to any other statute of this State, or under the general equity powers or practice of such Court; the District Court appointing such Receiver, or having jurisdiction of the matter of said assignment, may proceed as in this act provided.

30 SEC. 2. Upon the petition of the assignee or Receiver of any such corporation, or of any creditor of such corporation who has filed his claim in such assignment or receivership proceedings, the said District Court shall, by order, appoint a time for hearing not less than thirty (30) days nor more than sixty (60) days from the time of filing said petition with the Clerk of said

Court and shall direct such notice of such hearing to be given by the party presenting said petition, by publication or otherwise, as the Court in its discretion may deem proper; but if said petition be filed by a creditor other than the assignee or receiver of said corporation, the Court shall direct that notice of such hearing be personally served on such assignee or receiver.

SECT. 3. At such hearing the Court shall consider such proofs, by affidavit or otherwise, as may then be offered by the assignee or Receiver, or by any creditor or officer or stockholder of said corporation who may appear in person or by attorney, as to the probable indebtedness of said corporation, and the expenses of said assignment or receivership and the probable amount of assets available for the payment of such indebtedness and expenses, and also as to what parties are or may be liable as stockholders of said corporation, and the nature and extent of such liability. And if it appear to the satisfaction of the Court that the ordinary assets of said corporation, or such amount as may be realized therefrom within a reasonable time, will probably be insufficient to pay and discharge in full and without delay its indebtedness, and the expenses of such assignment or receivership, and that it is necessary or proper that resort be had to such liability of its stockholders, the said
31 Court shall thereupon, by order, direct and levy a ratable assessment upon all parties liable as stockholders, or upon or on account of any stock or shares of said corporation for such amount, proportion or percentage of the liability upon or on account of each share of said stock as the Court in its discretion may deem proper (taking into account the probable solvency or insolvency of stockholders, and the probable expenses of collecting the assessment), and shall direct the payment of the amount so assessed against each share of said stock to the assignee or receiver within such time thereafter as said Court may specify in said order.

SECT. 4. Said order shall direct the assignee or receiver to proceed to collect the amount so assessed against each share of said stock from the parties liable therefor; and shall direct and authorize said assignee or receiver, in case of the failure of any party liable upon or on account of any share or shares of said stock to so pay the amount so assessed against the same within the time specified in said order, to prosecute actions against each and every such party failing to pay the same, wherever such party may be found, whether in this State or elsewhere.

SECT. 5. Said order and the assessment thereby levied shall be conclusive upon and against all parties liable upon, or on account of, any stock or shares of said corporation, whether appearing or represented at said hearing, or having notice thereof, or not, as to all matters relating to the amount of, and the propriety of and necessity for the said assessment. This provision shall also apply to any subsequent assessment levied by said Court, as hereinafter provided.

32 SEC. 6. It shall be the duty of such assignee or receiver to, and he may, immediately after the expiration of the time specified in said order for the payment of the amount so assessed

by the parties liable therefor, institute and maintain an action or actions against any and every party liable upon, or on account of, any share or shares of such stock who has failed to pay the amount so assessed against the same for the amount for which such party is so liable. Said actions may be maintained against each stockholder, severally, in this State or any other State or country where such stockholder, or any property subject to attachment, garnishment or other process in an action against such stockholder may be found. But if said assignee or receiver shall in good faith believe any stockholder so liable to be insolvent, or that the expense of prosecuting such action against such stockholder will be so great that it will be of disadvantage to the estate and the interest of creditors to prosecute the same, said assignee or receiver shall so report to said Court; and shall not be required to institute or prosecute any such action unless specifically directed so to do by said Court. And in such case said Court shall not require said Receiver to institute or maintain such action unless said Court shall have reasonable cause to believe that the result of such action will be of advantage to the estate and creditors of said corporation; except as hereinafter provided.

SECT. 7. In any case where the Court shall have levied an assessment against stockholders as in this act provided, for a less amount or proportion than the full amount of the liability upon or on account of the stock of said corporation, and it shall thereafter be made to appear to the satisfaction of said Court, by
33 petition or otherwise, and upon hearing as hereinbefore provided, that by reason of the insolvency of stockholders, or for any other cause, it is necessary or desirable or for the interest of creditors that another and further assessment upon or against said stock be levied, the Court shall by order direct and levy a further and additional assessment for such amount, proportion or percentage of the liability upon or on account of each share of said stock, as the Court in its discretion may deem proper, and in the same manner may levy further and additional assessments upon said stockholders, and against said stock, not exceeding in the aggregate the maximum amount of liability, upon or on account of the stock of said corporation.

SECT. 8. All the provisions of this act shall apply to any such assessment levied by said Court after the first, and to the proceedings preliminary to levying and directing the same, to the same extent and with the same force and effect as to the first assessment so levied under the provisions of this act.

SECT. 9. Where two (2) or more assessments are levied or directed, the assignee or receiver may join the causes of action accruing against any stockholder upon any two or more such assessments in a single action against such stockholder or he may, at his discretion, unless otherwise directed by the Court, maintain a separate action against each stockholder for each successive assessment levied or directed.

That said laws continued in force without change, modification or amendment until the first day of March, 1906, at which date the

Revised Laws of the State of Minnesota for 1905 took effect, that in and by the said Revised Laws the wording of the said sections
34 of Chapter 272 of the General Laws of Minnesota for 1899 was changed and amended so that by Sections 3184 to 3188 inclusive of said Revised Laws, which said sections of said Revised Laws are still in full force and effect, it was provided as follows, to-wit:

"3184. Enforcement of Stockholders' Liability.—Whenever it shall be made to appear by the petition of a receiver or assignee of a corporation, or any creditor thereof whose claim has been filed, that any constitutional, statutory or other liability of stockholders or directors or both exists, and that it is necessary to resort to the same, the court shall appoint a time for hearing, not less than thirty nor more than sixty days thereafter, and order such notice thereof as it deems proper, by publication or otherwise, to be given. When the receiver is not the petitioner, personal notice shall be given to him. ('99 c. 273 ss. 1, 2)."

"3185. Hearing Upon the Petition.—Upon such hearing after proof of due service of notice, the court shall receive and consider such evidence by affidavit or otherwise as may be presented by the receiver, or by any creditor, officer, or stockholder, appearing in person or by attorney, upon the following points:

1. The nature and probable extent of the indebtedness of the corporation;
2. The probable expense of the receivership;
3. The probable amount of available assets;
4. The parties liable as stockholders, the nature and extent of the liability of each, and their probable solvency or responsibility.

If it appears that the available assets, or such amount as may be realized therefrom within a reasonable time, will be insuffi-
35 cient to pay such expenses and indebtedness in full and without delay, the court shall order a ratable assessment upon all parties liable as stockholders, or upon account of any stock of such corporation, for such amount, proportion, or percentage of such liability upon or on account of each share of such stock as it shall deem proper considering the probable solvency and responsibility of the stockholders and the probable expense of collecting such assessment, and shall direct payment of the amount so assessed against each share of such stock to the assignee or receiver, within the time specified in such order. ('99, c. 272 s. 3)."

"3186. Contents of Order—Conclusiveness.—Such order shall authorize and direct the assignee or receiver to collect the amount so assessed, and, on failure of any one liable to such assessment to pay the same within the time prescribed, to prosecute an action against him, whether resident or non-resident, and wherever found. Such order shall be conclusive as to all matters, relating to the amount, propriety, and necessity of the assessment, against all parties therein adjudged liable upon, or on account of any stock or shares of such corporation, whether appearing or being represented at the hearing or not, or having notice thereof or not. ('99 c. 272 ss. 4, 5)."

"3187. Actions for Assessments, How and Where Prosecuted.—Upon expiration of the time specified in the order for the payment of assessments, the assignee or receiver shall commence action against every party so assessed and failing to pay, wherever he or any property subject to process in such action is found, unless he shall report to the court that he believes such stockholder to be insolvent, or that the expenses of the prosecution will prob-
36 ably exceed the amount likely to be collected, in which case the court, unless satisfied to the contrary, shall order action suspended as to such party. ('99, c. 272 c. 6)."

"3188. Additional Assessments, How Levied.—Joinder of Causes.—Whenever, at any time an assessment for an amount less than the maximum stockholders' liability has been levied, it shall appear, by petition or otherwise, and after hearing as hereinbefore provided, that by reason of the insolvency of stockholders, or for any other cause, it is necessary, for the interest of creditors, that a further assessment be levied, the court shall order the same for such amount, proportion or percentage as it may deem proper; and in the same manner, and with like effect, at any time thereafter may levy additional assessments, not exceeding in the aggregate the maximum stockholders' liability. Whenever two or more assessments shall have been levied, the assignee or receiver may recover therefor in a single action, or, unless otherwise directed, may maintain a separate action against each stockholder for each successive assessment. ('99, c. 272 ss. 7-9)."

That this plaintiff, by virtue of the laws of the State of Minnesota, and his appointment as such Receiver, became, and was and is the representative of all the stockholders and creditors of said insolvent corporation, is invested with the title to all the rights of action possessed by said corporation, including the aforesaid liability of its stockholders, and is authorized to maintain such actions as are necessary to recover the assets thereof, included among which is the liability of said defendant hereinbefore set forth.

That on the 16th day of April, 1902, the plaintiff, as such Receiver, duly made and caused to be filed with and presented to said District Court of said Washington County, according to law,
37 a petition by the plaintiff as such Receiver, praying among other things, that said Court might, by order or judgment in said action, direct and levy a ratable assessment upon the parties liable as stockholders of said Thresher Company, for such amount, proportion, or percentage of the liability, upon or on account of each share of said stock, as the said Court should deem proper after hearing, as by law provided, pursuant to the provisions of Chapter 272 of the General Laws of Minnesota for the year 1899 (An Act entitled "An Act to provide for the better enforcement of the liability of stockholders of corporations"), as hereinbefore set forth, and praying that said Court by order appoint a time for hearing such petition and application, and direct such notice thereof to be given as said Court should deem proper.

That on said 16th day of April, 1902, said Court duly made and entered its order in said last-mentioned action in pursuance of the

provisions of said Chapter 272 of the Laws of 1899; that notice of said order was duly given in the manner prescribed by said order, notice of said order being duly published and served or mailed as therein directed; and that a copy of said order was duly mailed to the defendant herein more than twenty days prior to the date of hearing specified therein. That said matter, having been duly adjourned from time to time, and having duly come on for final hearing on the 10th day of December, 1902, at which time evidence was introduced by the Receiver and by certain objecting stockholders in said Thresher Company, and the said matter having been orally argued to said Court by counsel on behalf of said stockholders and by counsel on behalf of this plaintiff, thereafter, and on the 22nd day of December, 1902, said Court duly made and entered its order or decree in said action, a true copy of which said
38 order or decree is hereto annexed, marked "Exhibit A," and hereby referred to and made a part hereof as fully as if set up at length herein, and said last-mentioned order or decree has never been in any manner reversed, modified or set aside.

That said Court, in and by said order or decree, adjudged that an assessment of thirty-six (36) per cent. of the par value of each share of the capital stock of said Thresher Company—to-wit, the sum of eighteen dollars ($18) on each share thereof be, and the same was thereby, assessed upon and against each and every share of said capital stock, and upon and against the person, corporation or party liable as a stockholder of said Thresher Company for, upon or on account of said shares of stock, and that each and every person, corporation or party liable as such stockholder of said Thresher Company pay, and was thereby directed to pay to this plaintiff, as Receiver of said Thresher Company, at his office in the City of Stillwater, County of Washington and State of Minnesota, within thirty days after the date of said order, the said sum of eighteen dollars ($18) for and on account of each and every share of said stock for or upon which said person, corporation or party was liable as a stockholder of said Thresher Company as aforesaid, and that in and by said order or decree this plaintiff, as such Receiver, was ordered to give due notice of such order or decree by mailing a copy of the same within ten days from the date thereof to each stockholder of said Thresher Company whose name and address *was* known to said Receiver.

That notice of said last mentioned order of said District Court of said Washington County was duly given by the plaintiff as such Receiver, as prescribed by said order, and in the manner directed thereby.

That certain stockholders of said Thresher Company who duly intervened in said last mentioned action, and objected to the issuance of said last mentioned order or decree and the levy of any assessment, duly prosecuted an appeal from said last men-
39 tioned order or decree to the Supreme Court of said State of Minnesota; that said appeal was duly heard and considered by said Supreme Court; and that at the April Term, A. D. 1903, of said Court judgment was rendered and entered in said matter in and by said Supreme Court, determining and adjudging

that the said order or decree so appealed from be in all things affirmed.

That the plaintiff gave notice of the decision and judgment of said Supreme Court in the matter of said order or decree by mailing a copy of said order and of the opinion of said Supreme Court to each stockholder of said Thresher Company whose name and address were known to the plaintiff.

In and by authority of the last mentioned order and of the constitution and laws of the State of Minnesota and under the constitution of the United States providing that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state, there is due and owing from the defendant to the plaintiff as such Receiver the sum of three hundred seventy-eight dollars ($378.00), and interest thereon at the rate provided by the laws of said State of Minnesota, to-wit, at the rate of six per cent. per annum from the twenty-first day of January, 1903. That more than thirty days have elapsed since the date of said order and the plaintiff as such Receiver has duly demanded of the defendant the payment of the amount due from her as such stockholder of said Minnesota Thresher Company under and pursuant to said order; and the defendant has failed and refused to pay the same or any part thereof, and no part thereof has been paid.

And for a separate and further cause of action the plaintiff here reaffirms all the allegations contained in Folio 1 to Folio 50 to end of paragraph, and further says that on the 1st day of May, 1907, the plaintiff, as such Receiver, duly made and caused to be filed with and presented to said Dis-
40 trict Court of said Washington County, according to law, a further petition by the plaintiff as such Receiver, praying, among other things, that said Court might, by order or judgment in said action, direct and levy a second ratable assessment upon the parties liable as stockholders of said Thresher Company, for such further and additional amount, proportion or percentage of the liability upon or on account of each share of the said stock, as said Court should deem proper after hearing thereon, as by law provided, pursuant to the provisions of the Laws of the State of Minnesota, and praying that said Court by order appoint a time for hearing such petition and application, and direct such notice thereof to be given as said Court should deem proper.

That on the said 1st day of May, 1907, said Court duly made and entered its order in said last-mentioned action in pursuance of the provisions of said Chapter 272 of the Laws of 1899; that notice of said last mentioned order was duly given in the manner prescribed by said order, such notice being duly published and served or mailed as therein directed; and that a copy of said order was duly mailed to the defendant herein on or before the 15th day of May, 1907. And that said matter having duly come on for hearing on the 11th day of June, 1907, at which time evidence was introduced by the Receiver and the said matter was submitted to the Court by counsel for the Receiver, and no opposition was made thereto on behalf of

any of the stockholders of said Thresher Company, and it thereupon being made to appear to the satisfaction of the Court by said last-mentioned petition and the evidence introduced at said hearing that, by reason of the insufficiency of said first assessment to that end, and the inability of the Receiver to enforce the same against a large number of stockholders, and for other causes, it was necessary and desirable and for the interest of the creditors that another and
41 further assessment upon or against said stock be levied, the said Court then and thereupon directed and levied a further and additional assessment for such amount, proportion and percentage of the liability upon or on account of each share of said stock, as said Court in its discretion deemed proper, and then and thereupon duly made and entered its further order or decree in said action therefor and to that end, a true copy of which said order or decree is hereto annexed, marked "Exhibit B," and hereby referred to and made a part hereof as fully as if set up at length therein, and said last-mentioned order has never been in any manner reversed, modified or set aside.

That said Court, in and by said last-mentioned order or decree, adjudged that a further assessment of sixty-four per cent. (64) of the par value of each share of the capital stock of said Thresher Company to-wit, the sum of thirty-two dollars ($32) on each share thereof be and the same was thereby, assessed upon and against each and every share of said capital stock, and upon and against the person, corporation or party liable as a stockholder of said Thresher Company for, upon or on account of said shares of stock, and that each and every person, corporation or party liable as such stockholder of said Thresher Company pay, and was thereby directed to pay to this plaintiff, as Receiver of said Thresher Company, at his office in the City of Stillwater, County of Washington and said State of Minnesota, within thirty days after the date of said order, the said sum of thirty-two dollars ($32) for and on account of each and every share of said stock for or upon which said person, corporation or party was liable as a stockholder of said Thresher Company as aforesaid, and that in and by said last mentioned order or decree this plaintiff, as such Receiver, was ordered to give due notice of such order or decree by mailing a copy of the same within ten days
41½ from the date thereof to each stockholder of said Thresher Company whose name and address *was* known to said Receiver.

That notice of said last-mentioned order of said District Court of said Washington County was duly given by the plaintiff as such Receiver, as prescribed by said order, and in the manner directed thereby.

That in and by the authority of said last mentioned order or decree, and of the constitution and laws of the State of Minnesota, and under the constitution of the United States providing that full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state, there is due and owing from the defendant to the plaintiff, as such Receiver, the

sum of six hundred seventy-two dollars ($672.) and interest thereon at the rate of six per cent. per annum from the 11th day of July, 1907; that more than thirty days have elapsed since the date of said last mentioned order, and that the plaintiff, as such Receiver, has duly demanded of the defendant payment of the amount due from her as such stockholder of said Thresher Company, under and pursuant to said order; that the defendant has failed and refused to pay the same or any part theerof, and that no part thereof has been paid.

Wherefore, the plaintiff as such Receiver demands judgment against the defendant for the sum of three hundred seventy-eight ($378.00) dollars and interest thereon at the rate of 6% per annum from the 21st day of January, 1903, under the first cause of action alleged in said complaint. And the plaintiff as such Receiver further demands judgment against the defendant for the sum of $672.00 and interest thereon from the 11th day of July, 1907, at the rate of 6% per annum under the second clause of action alleged in the complaint, and for the costs and disbursements of this action.

JONES & SCHUBRING,
Plaintiff's Attorneys, Madison, Wis.
C. A. SEVERANCE,
Of Counsel.

42 STATE OF WISCONSIN,
Dane County, ss:

Burr W. Jones being first duly sworn on oath deposes and says that he is one of the attorneys for the plaintiff above named and has heard read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true; that his knowledge and information in respect to the matters stated in said complaint are derived from an examination of copies of the records in said matters and from statements made to him by the attorneys for the receiver above named and that the plaintiff and the documents above referred to are not within the State of Wisconsin.

BURR W. JONES.

Subscribed and sworn to before me this 20th day of August, 1907.

DAISY E. LORIGAN,
Notary Public, Dane County, Wisconsin.

43 "EXHIBIT A."

STATE OF MINNESOTA,
County of Washington:

District Court, First Judicial District.

MERCHANTS NATIONAL BANK OF ST. PAUL, MINN. (a Corporation),
Plaintiff,
v.
MINNESOTA THRESHER MANUFACTURING COMPANY (a Corporation),
Defendant.

Order.

This matter having come on to be heard at a special term of this court held at the Court House in the City of Stillwater, in said County and State, on Tuesday, the 10th day of June, 1902, at ten o'clock in the forenoon, pursuant to an order made and entered herein on the 16th day of April, 1902, upon the petition of Theodore R. Converse, Receiver of said defendant corporation, which petition was duly filed with the Clerk of this court, praying among other things that this court might, by order herein, direct and levy a ratable assessment upon the parties liable as stockholders of said defendant corporation, for such amount, proportion or percentage of the liability, for or on account of each share of said stock, as the court should deem proper after hearing as by law provided, pursuant to the provisions of Chapter 272 of the General Laws of Minnesota for the year 1899; and said Receiver having duly appeared at said special term of court on the said 10th day of June, 1902, in support of the said petition of said Receiver by Messrs. Davis, Kellogg & Severance, his attorneys; and Messrs. Koon, Wheelan and Burnett, Charles P. Searle, and J. H. Benton, Jr. having appeared in opposition thereto on behalf of the following named stockholders of said defendant, to-wit:

44 D. N. Morgan, of Bridgeport, Conn.; George E. Carter, of Boston, Mass.; Dime Savings Bank, of Norwich, Conn.; Hingham National Bank, of Hingham, Mass.; Mechanics National Bank, of Worcester, Mass.; Great Falls National Bank, of Great Falls, N. H.; Naumkeag National Bank, of Salem, Mass.; Home National Bank, of Brockton, Mass.; and Second National Bank, of Bangor, Maine, and said counsel for objecting stockholders having filed a written objection and answer to the said petition, to which a reply was duly filed by the counsel for said Receiver, and it appearing to the satisfaction of the Court that copies of said order dated April 6th, 1902, were duly published, mailed and served in the manner therein prescribed, and due notice of said hearing was duly given by said Receiver to the defendant and to each stockholder of record of the defendant, as directed by said order, and the said matter having been adjourned from time to time, and having duly come on for final hearing on Wednesday, the 10th day of December,

1902, at which time evidence was introduced by the Receiver and by said objecting stockholders, and the said matter having been orally argued to this Court by M. B. Koon, Esq., one of the counsel for said objecting stockholders, on behalf of said stockholders, and by C. A. Severance, Esq., one of the attorneys for said Receiver, on behalf of said Receiver, and it appearing to the satisfaction of the Court, after hearing and considering the proofs and evidence introduced at said hearing by and in behalf of said parties respectively, and the arguments of counsel, that it is necessary and proper that an assessment of eighteen dollars ($18) on each share of capital stock of said corporation be directed and levied herein against all parties liable as stockholders of said defendant.

Now therefore, it is ordered, that an assessment of thirty-six per cent. (36%) of the par value of each share of the capital stock of said defendant—to-wit, the sum of eighteen dollars ($18)
45 on each share thereof be, and the same is hereby, assessed upon and against each and every share of said capital stock, and upon and against the person, corporation or party liable as a stockholder of defendant for, upon or on account of such shares of stock, and that each and every person, corporation or party liable as such stockholder of said defendant be, and he is hereby, directed to pay to Theodore R. Converse, Receiver of said defendant, at his office in the City of Stillwater, County of Washington and State of Minnesota, within thirty (30) days after the date of this order, the said sum of eighteen dollars ($18) for and on account of each and every share of said stock for or upon which said person, corporation or party is liable as a stockholder of said defendant, as aforesaid.

Ordered further, That said Receiver forthwith proceed to collect the several amounts due from the several persons, corporations and parties liable as stockholders of said defendant under the terms of this order, and hold the amount thus collected subject to the further order of this court herein.

Ordered further, That in case any party, corporation or party liable as a stockholder of said defendant shall fail to pay the amount hereby assessed against the share or shares of stock held or owned by such stockholder, or upon or on account of which he or it may be liable, within the time hereinbefore specified, said Receiver is hereby directed and authorized to forthwith institute and prosecute such action or actions or other proceedings against such person, persons, corporation or party liable in any court having jurisdiction, whether in this State or elsewhere, which said Receiver may deem necessary or proper for the recovery of the amount due from such person, persons, corporation or party under the terms of this order.

Ordered further, That said Receiver give due notice of this order by mailing a copy of the same within ten days from the date hereof to each stockholder of said defendant whose name and
46 address is known to said Receiver.

By the Court,

W. C. WILLISTON,
District Judge.

Dated December 22nd, 1902.

4—211

47 "EXHIBIT B."

STATE OF MINNESOTA,
County of Washington:

District Court.

MERCHANTS NATIONAL BANK OF ST. PAUL, MINN.,
v.
MINNESOTA THRESHER MANUFACTURING COMPANY, a Corporation, Defendant.

Order.

This matter having come on to be heard at a Special Term of this Court held at the Court House in the City of Stillwater, in said County and State, on Tuesday, the 11th of June, 1907, at ten o'clock in the forenoon, pursuant to an order made and entered herein on the first day of May, 1907, upon the petition of Theodore R. Converse, Receiver of said defendant corporation, which petition was duly filed with the Clerk of this Court, praying among other things that this Court might, by order herein, direct and levy a further and additional ratable assessment upon the parties liable as stockholders of said defendant corporation, of sixty-four per cent (64) of the par value of the stock held by said stockholders respectively for or on account of each share of said stock as by law provided; and said Receiver having duly appeared at said Special Term of Court on said eleventh day of June, 1907, in support of said petition by Messrs. Davis, Kellogg & Severance and Robert E. Olds, Esq., his attorneys; and there being no appearance in opposition thereto;

And it appearing to the satisfaction of the Court that copies of said order dated May 1st, 1907, were duly published, mailed and served in the manner therein prescribed, and that due notice of said hearing was duly given by said Receiver to the defendant and to each stockholder of record of the defendant, as directed by said order; and evidence having been orally introduced
48 by the Receiver and the said matter having been orally argued to this Court by Robert E. Olds, Esq., one of the attorneys for said Receiver on behalf of said Receiver, and it appearing to the satisfaction of the Court after hearing and considering the proofs and evidence introduced at the said hearing by and in behalf of said parties respectively, and the arguments of counsel, that it is necessary and proper that a further and additional assessment of $32. on each share of the capital stock of said corporation in addition to the assessment of $18. on each of said shares heretofore directed and levied in and by the order of the Court made and entered on the 22nd of December, 1902, be directed and levied herein against the parties liable as stockholders of said defendant.

Now therefore, it is ordered, That a further and additional assess-

ment of sixty-four per cent. of the par value of each share of the capital stock of said defendant, to-wit: the sum of $32 on each share thereof be, and the same is hereby assessed upon and against each and every share of said capital stock, and upon and against the person, corporation or party liable as a stockholder of defendant for, upon or on account of such shares of stock, and that each and every person, corporation or party liable as such stockholder of said defendant be and he is hereby directed to pay to Theodore R. Converse, Receiver of said defendant, at his office in the City of Stillwater, County of Washington, and State of Minnesota, within thirty (30) days after the date of this order, the said sum of $32 for and on account of each and every share of said stock for or upon which said person, corporation or party is liable as a stockholder of said defendant as aforesaid; the said assessment hereby directed and levied being in addition to the assessment of 36% upon each share of said capital stock, to-wit: the sum of $18. per share
49 heretofore directed and levied in and by the order of this Court made and entered on the 22nd day of December, 1902;

Order- further, that said Receiver forthwith proceed to collect — the several persons, corporations and parties liable as stockholders of said defendant under the terms of this Order, and hold the amount thus collected subject to the further order of this Court herein;

Ordered further, that in case any person, corporation or party liable as a stockholder of said defendant shall fail to pay the amount hereby assessed against the share or shares of stock held or owned by such stockholder, or upon or on account of which he or it may be liable within the time hereinbefore specified said Receiver is hereby directed and authorized to forthwith institute and prosecute such action or actions or other proceedings against such person, persons, corporation or party liable, in any court having jurisdiction, whether in this state or elsewhere, which said Receiver may deem necessary or proper for the recovery of the amount due from such person, persons, corporation or any party under the terms of this Order;

Ordered further, that said Receiver give due notice of this order by mailing a copy of the same within ten (10) days from the date hereof to each stockholder of said defendant whose name and address is known to said Receiver.

By the Court:

P. H. STOLBERG,
District Judge.

Dated June 11th, 1907.

50 (Endorsements): State of Wisconsin, Circuit Court, Dane County. Theodore R. Converse as Receiver of The Minnesota Thresher Mfg. Co., plaintiff, vs. Caroline A. Hamilton, Defendant. Complaint. Service of a copy of the within complaint admitted this 7th day of September, 1907. Sanborn & Blake, Attorneys for Def. Jones & Schubring, Badger Block, Madison, Wisconsin, Plaintiff's Attorneys. Circuit Court Dane County. Filed Sept. 19, 1907. Lawrence O. Larson, Clerk. Filed July 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

51 STATE OF WISCONSIN:

Circuit Court Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,
vs.
CAROLINE A. HAMILTON, Defendant.

Now comes the defendant and demurs to the complaint in the above entitled action because it appears upon the face thereof,

1. That the court has no jurisdiction of the subject of the action;
2. That the complaint does not state facts sufficient to constitute a cause of action.

SANBORN & BLAKE,
Attorneys for Defendant.

(Endorsements:) State of Wisconsin, Dane Circuit Court. Theodore R. Converse, as Receiver of the Minnesota Thresher Mfg. Co., plaintiff, vs. Caroline A. Hamilton, Defendant. Demurrer. Received copy of within this 19th day of Sept., 1907. Jones & Schubring and C. A. Severance, Attorneys for plaintiff. Sanborn & Blake, Wisconsin Building, Madison, Wisconsin, Defendant's attorneys. Circuit Court Dane County. Filed Sept. 19, 1907. Lawrence O. Larson, Clerk. Filed July 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

52 STATE OF WISCONSIN:

Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,
vs.
CAROLINE A. HAMILTON, Defendant.

Now comes the defendant and demurs to the complaint in the above entitled action because it appears on the face thereof:

1. That the court has no jurisdiction of the subject of the action.
2. That the plaintiff has not legal capacity to sue, and
3. That the complaint does not state facts sufficient to constitute a cause of action.

SANBORN & BLAKE,
Attorneys for Defendant.

(Endorsements:) State of Wisconsin, Dane Circuit Court. Theodore R. Converse, as Receiver plaintiff, vs. Caroline A. Hamilton, Defendant. Amended Demurrer. Received Copy of within this 26th day of Sep. 1907. Jones & Schubring Attorneys for plaintiff. Sanborn & Blake, Wisconsin Building, Madison, Wisconsin, Defendant's Attorneys. Circuit Court Dane County, Wis. Filed Oct. 2, 1907. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908, Clarence Kellogg, Clerk of Supreme Court, Wis.

53 STATE OF WISCONSIN:

Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of Minnesota Thresher Manufacturing Company, Plaintiff,
vs.
CAROLINE A. HAMILTON, Defendant.

Directions for Order Sustaining Demurrer.

By the COURT:

It is the settled judicial policy of this state that a Minnesota receiver may not use the courts of this state to enforce such a liability as that upon which plaintiff's cause of action is grounded. The adoption of this policy "is a question exclusively for the courts of this (that) state to decide." Finney v. Guy, 189 U. S. 335, 23 Sup. Ct. Rep. 558, 562.

Bernheimer v. Converse, 206 U. S. 516, 27 Sup. Ct. Rep. 755, does not question this rule, in fact does not even consider it one way or the other. That case turns upon the question of whether the change in the statutory method in enforcing the stockholders' liability made by the recent amendment of the Minnesota law violates the obligations on a contract within the prohibition of the federal constitution. The decision also declares the rule that the receiver appointed under the laws of Minnesota had the authority to maintain an action in a foreign jurisdiction. This rule is not questioned in Wisconsin, but is expressly recognized in the last case declaring the judicial policy of this state. Hunt v. Whewell, 122 Wis. 33, 42.

54 The court finds nothing that will warrant it in departing from the rule that a receiver appointed in a foreign jurisdiction cannot enforce such a claim as that here presented by an action in the courts of this state.

The demurrer to the complaint is sustained. Defendant's counsel may draw the proper order, which may provide that the plaintiff may serve the amended complaint within twenty days from the date of the service of this order upon condition that he pay $10 costs.

Dated July 6, 1908.

EDWARD H. SMITH,
Official Reporter.

(Endorsements:) Circuit Court, Dane County. Theodore R. Converse, as Receiver of the Minn. Thresher Mfg. Co., Plaintiff, vs. Caroline A. Hamilton, Defendant. Directions for Order Sustaining Demurrer. Circuit Court, Dane County. Filed Jul- 6, 1908. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

55 STATE OF WISCONSIN:

Circuit Court Dane County.

THEODORE CONVERSE, as Receiver, Plaintiff,
vs.
CAROLINE A. HAMILTON, Defendant.

The demurrer of the defendant to the complaint of the plaintiff herein, having come on to be heard before this court, Jones & Schubring appearing for the plaintiff, and Sanborn & Blake, appearing for the defendant, and the court being fully advised in the premises;

Now, therefore, on motion of Sanborn & Blake, attorneys for the defendant.

It is ordered that the demurrer to the complaint be and the same is hereby sustained, and that the plaintiff may serve an amended complaint within twenty days from the date of service of this order, upon payment of $10 costs, and upon failure to so amend judgment may be entered dismissing the complaint.

Dated July 7, 1908.

By the Court: E. RAY STEVENS, *Judge.*

(Endorsements:) State of Wisconsin, Dane Circuit Court. Theodore Converse, as Receiver, plaintiff, vs. Caroline A. Hamilton, defendant. Order Sustaining Demurrer. Received copy of within this 7th day of July, 1908, Jones & Schubring, Attorneys for Plaintiff. Sanborn & Blake, Wisconsin Building, Madison, Wisconsin, Defendant's Attorneys. Circuit Court Dane County, Wis. Filed Jul- 10, 1908, Judg. & Rec. Book 23 p. 7. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908, Clarence Kellogg Clerk of Supreme Court, Wis.

56 STATE OF WISCONSIN:

In Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,
vs.
CAROLINE A. HAMILTON, Defendant.

And now comes the plaintiff above named and excepts to the order of the Court sustaining the demurrer in the above entitled action, said order being dated July 7th, 1908.

JONES & SCHUBRING AND
C. A. SEVERANCE,
Plaintiff's Attorneys.

Dated this 10th day of July, 1908.

(Endorsements:) Circuit Court Dane County, Wis. Filed Jul- 10, 1908. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

57 At a General Term of the Circuit Court for Dane County, State of Wisconsin, Begun and Held at the Court House in the City of Madison, upon the 18th day of May, A. D. 1908, and upon the 10th Day of July, A. D. 1908, Present, the Honorable E. Ray Stevens, Circuit Judge, Presiding.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,
vs.
CAROLINE A. HAMILTON, Defendant.

An order having been entered in this action on the 8th day of July, 1908, sustaining the demurrer to the complaint herein and giving the said plaintiff leave to amend his complaint herein within twenty days after service of such order, and directing if said plaintiff should fail within that time to amend his complaint that the same be dismissed and judgment entered herein in favor of the defendant, and said plaintiff having elected not to amend his complaint, and having consented that judgment might be entered before the expiration of the said twenty days;

Now, on motion of Sanborn & Blake, attorneys for the defendant, it is considered and adjudged that the complaint herein be and the same is hereby dismissed, and the defendant have and recover her costs of the said plaintiff taxed at thirty-four and 54/100 Dollars.

By the Court.

LAWRENCE O. LARSON, *Clerk.*

58 (Endorsements:) State of Wisconsin, Dane Circuit Court. Theodore R. Converse, as Receiver, Plaintiff, vs. Caroline A. Hamilton, Defendant. Judgment. Filed and Entered Judg. & Rec. Book 23 Page 12, Jul- 10, 1908, Lawrence O. Larson, Clerk. Judgment Docket L Page 137. Sanborn & Blake, Wisconsin Building, Madison, Wis., Defendant's Attorneys. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

59 (Endorsements:) State of Wisconsin, Circuit Court, Dane County. Theodore R. Converse, as Receiver of Minn. Thresher Mfg. Co., Plaintiff, vs. Caroline A. Hamilton, Defendant. Notice, Certificate and Undertaking. Service of a copy of the within Notice of Appeal and understaking and certificate admitted this 11th day of July, 1908. Sanborn & Blake, Attorneys for Defendant. Lawrence O. Larson, Clerk. Jones & Schubring Badger Block, Madison, Wisconsin, Plaintiff's Attorneys. Circuit Court Dane County, Filed Jul- 11, 1908, Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

60 STATE OF WISCONSIN,
Dane County, ss:

In Circuit Court for Dane County.

I, Lawrence O. Larson, Clerk of said Court, do hereby certify tha the foregoing and annexed paper writings are the original Summons with admission of service; Complaint, with admission of service; De murrer and Amended Demurrer, with admission of Service; Direc tions for Order sustaining Demurrer; Order sustaining demurre with admission of Service; Exceptions to Order Sustaining De murrer; Judgment; Notice of Appeal to the Supreme Court and Un dertaking on Appeal, with admission of service, which have been filed in my office in the action wherein Theodore R. Converse, as Receive of the Minnesota Thresher Manufacturing Company is plaintiff, and Caroline A. Hamilton is defendant, and that the same are hereby transmitted to the Judges of the Supreme Court, of the State of Wis consin in pursuance of said notice of appeal.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Madison, in said County, thi 11th day of July A. D. 1908.

[SEAL.] LAWRENCE O. LARSON, *Clerk.*

(Endorsements:) State of Wisconsin, Circuit Court for Dane County. Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Co., Plaintiff, vs. Caroline A. Hamilton, De fendant. Return to Supreme Court. Filed Jul- 11, 1908, Clarence Kellogg, Clerk of Supreme Court, Wis.

61 And afterwards, to-wit: on the second day of October A. D. 1908, the same being the twelfth day of said term, the following proceedings were had in this court, in said cause, that i to say:

Dane Circuit Court.

THEODORE R. CONVERSE, as Receiver, &c., Appellant,
vs.
CAROLINE A. HAMILTON, Respondent.

And now at this day came the parties herein by their attor neys, and this cause having been argued by B. W. Jones, Esq. fo the said appellant, and by John B. Sanborn, Esq., for the said re spondent, and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to conside of its opinion.

62 And afterwards, to-wit: on the tenth day of November, A D. 1908, the same being the nineteenth day of said term judgment was rendered in said cause, by this court, in the words and figures following, that is to say:

Dane Circuit Court.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Appellant,
vs.
CAROLINE A. HAMILTON, Respondent.

Opinion by Justice Barnes.

This cause came on to be heard on appeal from the judgment of the circuit court of Dane county, and was argued by counsel. On consideration whereof: it is now here ordered and adjudged by this court, that the judgment of the circuit court of Dane county, in this cause, be and the same is hereby affirmed, with costs against the said appellant taxed at the sum of forty-five dollars ($45.00).

Justice Timlin dissents.

63 And afterwards, to-wit: on the tenth day of November, A. D. 1908, this court, by Justice Barnes, filed its opinion in said cause, in the words and figures following, that is — say:

64 STATE OF WISCONSIN,

In Supreme Court.

THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff and Appellant,
vs.
CAROLINE A. HAMILTON, Defendant and Respondent.

This action is brought against a resident of the State of Wisconsin to enforce a stockholder's liability arising under the laws of Minnesota. In May, 1901, the Merchants' National Bank of St. Paul, recovered a judgment against the Minnesota Thresher Manufacturing Company, (hereinafter called the bankrupt) a corporation organized under the laws of the State of Minnesota, amounting to $2,936.07. Execution was issued upon said judgment, and was returned unsatisfied, whereupon the plaintiff brought an action for the sequestration of the stock, property and effects of said bankrupt, and applied for the appointment of a receiver to take charge of the same. The plaintiff receiver was appointed in said action in August, 1901. In September, 1901, an order was made in the action, requiring the creditors of the bankrupt to become parties thereto, and to appear and exhibit therein their claims against said bankrupt. In pursuance of such order the claims of creditors were allowed to the amount of $443,752.12.

Section 3 of article X, constitution of Minnesota, provides that "each stockholder in any corporation (excepting those organized for the purpose of carrying on any kind of a manufacturing or mechanical business) shall be liable to the amount of stock held or

owned by him." The Supreme Court of Minnesota held, in the cas of Merchants' National Bank v. Minnesota Thresher Manufacutrin Company, 90 Minn. 144, that the capital stock of the bankrupt wa liable to assessment under this constitutional provision.

Under the law of Minnesota as it existed prior to 1899, th
65 double liability of stockholders could only be enforced by in stituting an action by or in behalf of the creditors, against th corporation and its stockholders, in the State of Minnesota. Thi law was materially modified by chapter 272 of the general laws o Minnesota for the year 1899, which statute was in effect at th time the receiver was appointed in this action. A statement of th substance of the Minnesota statute referred to, in so far as it i necessary to here state it, will be found in the report of Hunt v Whewell, 122 Wis 34, 35, (99 N. W. 599).

At the time the receiver was appointed, the defendant, a residen of the State of Wisconsin, was the owner of twenty-one shares o the stock of the bankrupt company of the par value of $1050. O December 22, 1902, an order was made in the receivreship proceed ing, levying an assessment of thirty-six per cent upon the outstandin capital stock of said corporation, and directing the receiver to in stitute the necessary proceedings to collect such assessment. O June 11, 1907, a second order was made levying a like assessmen of sixty-four per cent on the capital stock of the corporation, fo the purpose of paying its debts, and the receiver was by said orde directed to enforce collection of such assessment. This action i brought upon both assessments. A demurrer to the complaint wa interposed, which was sustained, and, the plaintiff declining t amend, final judgment was entered dismissing the complaint, fro which judgment this appeal is taken.

BARNES, *J.* It is conceded by counsel for both parties in thi case that every controverted question therein involved was also in volved and decided in Hunt v. Whewell, 122 Wis. 33. (99 N. W 599.)

It was there said, in reference to the cause of action sued upon "The liability is statutory, the remedy to enforce it is statutory, an the appellant's title is a creature of the statute." A conclusion wa reached, that, as to such a cause of action, the courts of this stat could if they chose close their doors and refuse to entertain the same

The opinion in Hunt v. Whewell covers every phase of thi
66 case that it is considered by the court necessary or even ad visable to cover here. As far as this court is concerned, th rule of *stare decisis* as to all questions involved, will be applied unti a higher tribunal reaches a different conclusion.

In the case of Bernheimer v. Converse, 26 U. S. 516, relied upo by appellant's counsel as practically overruling Hunt v. Whewell, th question of comity was not involved, was not discussed and was no passed upon in any way. The right to refuse comity was the sol question decided in Hunt v. Whewell. The Bernheimer case, there fore, is not in conflict therewith. For reasons given in Hunt v Whewell, and upon the grounds therein stated, the judgment in thi case should be affirmed.

By the Court: Judgment affirmed.

67 And on the tenth day of November, A. D. 1908, a dissenting opinion in this cause was filed by Justice Timlin, in the words and figures following, that is to say:

68 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Appellant,
vs.
CAROLINE A. HAMILTON, Respondent.

TIMLIN, *J.* (Dissenting.) Upon the questions involved in this cause I think the law is in a regrettable condition of uncertainty. Hancock National Bank v. Farnum, 176 U. S., 640; Huntington v. Attrill, 146 U. S. 657; Laing v. Rigney, 160 U. S. 531; Harding v. Harding, 198 U. S. 317; Finney v. Guy, 189 U. S. 335; Bernheimer v. Converse, 206 U. S. 516; Hunt v. Whewell, 122 Wis. 33; Finney v. Guy, 106 Wis. 256; Eau Claire v. Benson, 106 Wis. 624.

This is not a contest relating to property in this state and between creditors resident in this state and a foreign receiver. There are many such cases and there is some confusion on that subject. 1 Wharton Conflict of Laws, 3rd ed., sec. 390¾ et seq. But in this state the rules of law controlling that class of cases are fairly settled. There can ordinarily be in such cases no questions concerning the faith and credit to be given to judgments of a sister state because creditors of that class are not parties to the suit in which the receiver was appointed, nor is the property in this state bound *in rem*. But where, as in the instant case, the objection is made by the debtor against whom the action is brought by the foreign receiver and where such debtor was a party to the suit which resulted in the appointment of the foreign receiver, at least so far as that suit authorized an assessment and invested such receiver with the right to bring action or with the title in trust to the chose, different considerations arise. Bernheimer v. Converse, 206 U. S. 516; Converse v. Ayer, 84 N. E. Rep. 98. In the last described instances sec. 1, Art. IV Const. U. S. should control the rulings of the state court before which the foreign receiver brings his action to enforce a
69 demand in favor of such receiver and against such defendant. In such instances we should give the order or decree of the foreign court investing the receiver with the right to bring the action the same force this decree would have in the state where made. Hancock National Bank v. Farnum, 176 U. S. 640. The order is final and conclusive on these questions in Minnesota as we are informed. See Griggs v. Becker, 87 Wis. 313. So also, if by the law of the foreign state the title to all personal property or choses in action having a *situs* in that state is vested in the receiver in trust the foreign receiver comes into this state with the same right to sue in the courts of this state as any citizen of another state having title as trustee and he need not invoke the law of his own state further

than any other owner of a chattel or chose in action who has acquired title to the same in a sister state absolutely or in trust, is required to do, to manifest his ownership to the courts in this state.

The complaint here which may, in connection with an examination of the Minnesota statutes and decisions, be taken on demurrer to be true, states the force and effect of these proceedings in Minnesota. Hurley v. Donoghue, 116 U. S. 1, and Minnesota statutes and decisions referred to in Bernheimer v. Converse, and Converse v. Ayer, supra. This complaint informs us that the plaintiff by virtue of the laws of that state and his appointment as receiver, became, was and is the representative of all the stockholders and creditors of the insolvent corporation and invested with the title to all the rights of action possessed by said corporation and authorized to maintain this action. He is not then merely a juristic person possessing the latter legal quality only by force of laws which have no extra territorial effect as was the case in Anglo &c. Co. v. Davis &c. Co., 191 U. S. 373; s. c. 169 N. Y. 506; and Hale v. Allinson, 188 U. S. 56. It is here averred that the receiver is a resident and citizen of Minnesota. Art. IV, sec. 2, Const. U. S. The court of his state by order or interlocutory decree to which defendant was a party (Converse v. Ayer, and Bernheimer v. Converse, supra) invested him with title, in trust for other citizens, to this right of action. A statute of Wisconsin denying this decretal order the efficacy which it possessed in Minnesota, would be, I think, invalid. Christmas v. Russell, 5 Wall. 290; Keyser v. Lowell, 117 Fed. Rep. 400. Faith and credit must be given to "judicial proceedings." Sec. 1, Art. IV, Const. U. S. If so, a decision of the court to the same effect as such statutes must be erroneous. The discretion which comity permits the law forbids. The plaintiff has in such case a legal right. Whenever foreign law is necessarily invoked in any state for the purpose of establishing or maintaining juristic personality in a case where that is essential to maintain the suit, or for the purpose of maintaining a remedy, there being no right in the foreign state except that which is coupled with a particular remedy there given, which remedy on account of the absence of similar law in the state of the forum does not exist, then and in all such cases and in many other cases not necessary to mention here, the comity of the forum may or may not recognize such juristic person or such foreign law. When, however, the right of one of its citizens to maintain the action or his title to the chose has been adjudicated in the foreign state in an action to which the defendant was a party, the right to assert such right or title in this state in a court having general common law and equity jurisdiction is no longer a matter of comity but a matter of law.

I think the judgment should be reversed.

71 THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff in Error,
vs.
CAROLINE A. HAMILTON, Defendant in Error.

I, Clarence Kellogg, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office in the above entitled cause.

That the original writ of error, the petition therefor with the assignment of errors and the prayer for reversal, the citation with the admission of service endorsed thereon, and a copy of the bond are appended to the return herein, and that they are all returned to the Supreme Court of the United States in obedience to the command of the writ of error hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Madison, this 21st day of April, A. D. 1909.

[Seal Supreme Court of Wisconsin.]

CLARENCE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Endorsed on cover: File No. 21,642. Wisconsin Supreme Court. Term No. 211. Theodore R. Converse, receiver of The Minnesota Thresher Manufacturing Company, plaintiff in error, vs. Caroline A. Hamilton. Filed April 30th, 1909. File No. 21,642.

8

Supreme Court of the United States

OCTOBER TERM, 1910.

No. 42

Office Supreme Court, U. S.
FILED
DEC 17 1910
JAMES H. McKENNEY,
Clerk.

THEODORE R. CONVERSE,

Plaintiff in Error.

vs.

CAROLINE A. HAMILTON,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

CORDENIO A. SEVERANCE,
BURR W. JONES,
E. J. B. SCHUBRING,
Attorneys for Plaintiff in Error.

FRANK B. KELLOGG,
ROBERT E. OLDS,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1910.

No. 211.

THEODORE R. CONVERSE,

Plaintiff in Error,

vs.

CAROLINE A. HAMILTON,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT.

This case is similar both as to the nature of the proceeding, the history of the litigation and the decision of the Supreme Court of the state of Wisconsin, to the case of the same plaintiff in error against Jeneva S. McCauley, No. 212, upon the calendar of this court for the October term, 1910. The only difference in the cases lies in the fact that the defendants are not the same and the suit in this case is brought to recover the sum of $1,050 and

interest, being the assessment upon twenty-one shares of the capital stock owned by the defendant (Trans. of Rec. p. 14, Fol. 28), while a different and larger amount is involved in the McCauley case. In each case the suit was brought in the Circuit Court for Dane County, Wisconsin, a demurrer was interposed and was sustained, the memorandum of the trial court sustaining the demurrer being identical with that filed in the McCauley case. (Trans. of Rec. pp. 28, 29.) The plaintiff having elected to stand on his complaint and refusing to amend, judgment was entered dismissing the complaint and awarding the defendant costs to the amount of $34.54. An appeal was prosecuted to the Supreme Court of Wisconsin, judgment was affirmed with costs taxed at the sum of $45, 136 Wis. 589.

The statement of facts made by that court, together with the opinion of the majority of the court, speaking by Mr. Justice Barnes, and the dissenting opinion of Mr. Justice Timlin, are printed in the record. (Trans. pp. 33 to 36.)

The plaintiff in error insists here as he did in the courts below, that under Section 1, Article 4 of the Constitution of the United States, full faith and credit must be given to the interlocutory decree of the District Court for Washington County, Minnesota, ordering the assessment on the stock of the Minnesota Thresher Manufacturing Company, of which the defendant is the owner of twenty-one shares, and that therefore he was entitled to judgment for said sum of $1,050, as prayed in his complaint, which will be found in the record. (Trans. pp. 10 to 27.)

The defendant asserts that under the doctrine of comity between states it is open to the courts of Wisconsin to decide whether they will permit such an action as the one at bar to be pursued.

ASSIGNMENTS OF ERROR.

(Trans. pgs. 5 to 7.)

First. That the Supreme Court of the State of Wisconsin erred in determining that the plaintiff's complaint therein stated no cause of action and in refusing to reverse the judgment rendered in the defendant's favor in the Circuit Court of Dane County, Wisconsin, determining that said complaint stated no facts sufficient to constitute a cause of action.

Second. That the Supreme Court of the State of Wisconsin erred in determining that the opinion in the case of *Hunt v. Whewell*, 122 Wis. 33, in any way ruled this case, and in finding that as to said Supreme Court of the State of Wisconsin said decision was *stare decisis* as to all questions involved until a higher tribunal should reach a different conclusion.

Third. That the Supreme Court of the State of Wisconsin erred in determining that the question of comity was not involved or in any way passed upon in the case of *Bernheimer v. Converse*, 206 U. S. 516, and that the said Bernheimer case was not in conflict with said decision in *Hunt v. Whewell*, 122 Wis. 33.

Fourth. That the Supreme Court of the State of Wisconsin erred in failing to find that Chapter 272 of the General Laws of 1899, of Minnesota, and sections 3184-3190 of the Revised Laws of 1905, of Minnesota, both declare that assessments levied pursuant to their provisions are conclusive upon stockholders wherever they may be.

Fifth. That the Supreme Court of the State of Wisconsin erred in failing to find that the representation which

the defendant stockholder had by virtue of his membership in the said corporation was all that he was entitled to.

Sixth. That the Supreme Court of the State of Wisconsin erred in failing to find that the property of the defendant was not taken without due process of law under said proceedings under Chapter 272 of the General Laws of Minnesota for 1899, and Sections 3184 to 3190 inclusive Revised Laws of 1895 of Minnesota.

Seventh. That the Supreme Court of the State of Wisconsin erred in finding in effect that it is the settled judicial policy of the State of Wisconsin that a Minnesota receiver may not use the courts of this state to enforce such a liability as that upon which the plaintiff's cause of action is grounded and that the adoption of this policy is a question exclusively for the courts of this state to decide.

Eighth. That the Supreme Court of the State of Wisconsin erred in failing to find that an absolute right existed in the plaintiff to recover upon an assessment which was made by said interlocutory decree duly rendered by the Courts of the State of Minnesota in an action in which the defendant was represented by the corporation, and an action in which the Minnesota court had jurisdiction of the defendant to the extent necessary to make such interlocutory decree.

Ninth. The said Supreme Court erred in failing to find that it is not open to the Courts of this State to decide whether under the doctrine of comity between states it will permit such an action as the one at bar to be pursued.

Tenth. The Supreme Court of the State of Wisconsin erred in failing to find that the liability of stockholders though statutory in origin is contractual in its nature, and that under the statute the cause of action is transitory and

can be maintained in any tribunal having jurisdiction, where process could be served on the individual stockholder.

Eleventh. The Supreme Court of the State of Wisconsin erred in failing to find that Section 1, Article 4 of the Constitution of the United States should control the rulings of the State Court of Wisconsin in which the foreign receiver brings his action to enforce a judgment in favor of such receiver and against such defendant, and that this Court should give the orders and decrees of the Court of Minnesota the same force said orders and decrees would have in that state.

Twelfth. That the Supreme Court of the State of Wisconsin erred in failing to find that the said orders and decrees above mentioned by the Courts in the State of Minnesota were final and conclusive on the questions involved in said suit.

Thirteenth. That the Supreme Court of the State of Wisconsin erred in failing to find that said Receiver had the same right to sue in the courts of Wisconsin as any citizen of another State having title as Trustee.

Fourteenth. That the Supreme Court of the State of Wisconsin erred in denying the said orders and judgments of said Minnesota Court the efficacy to which they were entitled in the State of Minnesota, and therefore failed to give full faith and credit to said judicial proceedings within the meaning of the Constitution of the United States.

ARGUMENT.

We have discussed the law applicable to this case as fully as we deem necessary in the brief filed herewith in case No. 212, *Converse v. McCauley*, and it would seem idle to re-print here the argument there made. Every considera-

tion affecting the right of the plaintiff in error to recover is as applicable to one case as to the other. This was recognized by the Wisconsin court, which rendered its opinion upon the questions involved in this case and disposed of the McCauley case by a short statement:

> "This case in all material respects is identical with *Converse v. Hamilton*, ante, p. 589, 118 N. W. 190, and is controlled thereby."
>
> 126 Wis. 594.

We will therefore content ourselves with re-stating the propositions which are argued in the brief in the McCauley case, referring your honors to that brief for the authorities cited and discussed under the respective propositions:

I.

IT WAS HELD BY THE SUPREME COURT OF MINNESOTA THAT THE MINNESOTA THRESHER MANUFACTURING COMPANY IS NOT EXCLUSIVELY A MANUFACTURING OR MECHANICAL CORPORATION, AND HENCE THE STOCKHOLDERS ARE LIABLE.

II.

THE PLAINTIFF RECEIVER UNDER CHAPTER 272 OF THE GENERAL LAWS OF MINNESOTA FOR 1899, AND SECTIONS 3184 TO 3190 INCLUSIVE OF THE REVISED LAWS OF 1905, IS A REPRESENTATIVE OF THE CORPORATION AND OF ITS CREDITORS, AND HAS TITLE TO THE ASSESSMENTS SUED UPON AND IS AUTHORIZED TO ENFORCE SUCH ASSESSMENTS BY PROPER PROCEEDINGS EITHER IN THE STATE OF MINNESOTA OR ELSEWHERE.

III.

CHAPTER 272 OF THE GENERAL LAWS OF 1899, AND SECTIONS 3184 TO 3190 OF THE REVISED LAWS OF 1905, MERELY CHANGED AND ENLARGED THE REMEDY FOR THE ENFORCE-

MENT OF STOCKHOLDERS' LIABILITY, AND DID NOT CHANGE THE SUBSTANTIVE RIGHT, AND HENCE THE SAID LAWS ARE CONSTITUTIONAL.

IV.

THE JUDGMENT AT LAW AGAINST THE THRESHER COMPANY IN THE STATE COURT OF MINNESOTA AND THE DECREE IN THE SUBSEQUENT SUIT BASED THEREON, BY WHICH DECREE THE RECEIVER WAS APPOINTED, CANNOT BE COLLATERALLY ATTACKED.

V.

CHAPTER 272 OF THE GENERAL LAWS OF 1899, AND SECTIONS 3184 TO 3190 OF THE REVISED LAWS OF 1905, BOTH DECLARE THAT ASSESSMENTS LEVIED PURSUANT TO THEIR PROVISIONS, WHICH THE DEMURRER ADMITS WERE FOLLOWED IN THIS CASE, ARE CONCLUSIVE UPON STOCKHOLDERS WHEREVER THEY MAY BE.

VI.

UNDER THE DECISION OF THIS COURT IN BERNHEIMER VS. CONVERSE AND OTHER CASES DECIDED BY THIS COURT, IT IS CLEAR THAT FULL FAITH AND CREDIT MUST BE GIVEN IN ALL COURTS TO THE INTERLOCUTORY DECREE OF THE DISTRICT COURT OF WASHINGTON COUNTY, MINNESOTA, LEVYING THE ASSESSMENT IN QUESTION.

VII.

THERE IS NO QUESTION OF COMITY IN THIS CASE.

We respectfully submit that the judgment should be reversed.

CORDENIO A. SEVERANCE,
BURR W. JONES,
E. J. B. SCHUBRING,
Attorneys for Plaintiff in Error.

FRANK B. KELLOGG,
ROBERT E. OLDS,
Of Counsel.

[redacted]

Supreme Court of the United Sta[redacted]

[redacted]

No. 42

THEODORE R. CONVERSE, as Receiver of the [redacted]
[redacted] Manufacturing Company,

[redacted]

CARBONNE & HAMILTON [redacted]

[redacted]

BRIEF FOR DEFENDANT IN ERROR.

[redacted]

JOHN [redacted]
[redacted]
[redacted]
[redacted]



Supreme Court of the United States

OCTOBER TERM 1910.

No. 211

THEODORE R. CONVERSE, AS RECEIVER OF THE MINNESOTA THRASHER MANUFACTURING COMPANY,
Plaintiff in Error.

v.

CAROLINE A. HAMILTON,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF FACTS.

In order that the court may clearly apprehend the exact question raised we shall briefly refer to the material facts in this case.

The Minnesota Thrasher Manufacturing Company was a corporation organized under the laws of the state of Minnesota with a capital stock of $7,000,000.00. Becoming insolvent an action was brought by a creditor to sequester the assets of the corporation in which action Plaintiff in Error was appointed receiver. Creditors were required to file their claims in this action and claims aggregating $443,752.17 were filed and allowed. Upon petition of plaintiff two orders were made levying assessments aggregating 100% upon the capital stock of the corporation and directing plaintiff, in case the same were not paid, to commence actions against the stockholders, either within or without the state of Minnesota to recover such assessments. The defendant was not even a nominal party to the action. No service of notice of such proposed assessment was made upon her, nor did she appear in such action.

The defendant demurred to the complaint (Rec. 28) on the grounds:

1. That the court has no jurisdiction of the subject of the action.
2. That the plaintiff has not legal capacity to sue.

3. That the complaint does not state facts sufficient to constitute a cause of action.

The demurrer to the complaint was sustained by the trial court and judgment was entered dismissing the complaint, which judgment was affirmed by the supreme court of Wisconsin. From that affirmance the present writ of error was taken. The opinion of the supreme court shows that it was conceded by counsel on both sides that every controverted question therein involved was involved and decided in Hunt v. Whewell, 122 Wis. 33 and for the reasons stated in the opinion in Hunt v. Whewell the judgment of the lower court was affirmed. As the opinion in that case is not printed in the record it is printed here in order that the court may have before it the reasons for the decision in the case at bar and is as follows:

"MARSHALL, J. This appeal is ruled in favor of respondent by Finney v. Guy, 106 Wis. 256, 82 N. W. 595, and Eau Claire Nat. Bank v. Benson, 106 Wis. 624, 82 N. W. 604, particularly the former. Every vital question involved here was so thoroughly discussed and the policy of this state in respect thereto so plainly declared in Finney v. Guy, and that policy so unqualifiedly sustained by the federal supreme court in the same case in 189 U. S. 335, 23 Sup. Ct. 558, that it seems no useful purpose would be served by going over the matter again.

Our attention is called to Parker v. Stoughton M. Co., 91 Wis. 174, 64 N. W. 751, as analogous to the case before us. To our minds the two cases are widely different. The claim in the former was upon an assessment note belonging to the receiver as the representative of the corporation. It was a corporate asset strictly so called. The liability did not depend upon any statute, nor did the remedy to enforce it. Here the liability is contractual, to be sure, but it is so only by force of the statute. The liability is statutory, the remedy to enforce it is statutory, and appellant's title is a creature of the statute. The former is strictly transitory; the latter, as regards whether an absolute right or not is confined to the state of its creation. These views, thus expressed, have the distinct support of the supreme court of the United States in Hale v. Allison, 188 U. S. 56, 67, 23, Sup. Ct. 244, where it is plaintly indicated that in applying decisions to the two classes of claims, those treating of one class should not be confused with those treating of the other. True, the Massachusetts court, in Howarth v. Lombard, 175 Mass. 570, 56 N. E. 888, held, in effect, that since both classes of liabilities are to be worked out as parts of a common trust fund for the benefit of creditors they should be treated alike as regards the facilities furnished by courts of a state foreign to that of the debtor corporation for the

enforcement thereof; that no difference should be made between common-law and statutory liabilities. However, it should be noted that such court plainly there recognized that there is this important distinction between mere statutory rights and others; that the enforcibility of the latter in a state foreign to that of their creation depends upon the law of comity, and that in such field each state is free to establish its own policy unhampered by any outside law, state or national, as indicated in Finney v. Guy, 189 U. S. 335, 345, 23 Sup. Ct. 558.

> "If," said the Massachusetts court, "the statute creating the right is against the policy of the law of the neighboring state, that is a sufficient reason for refusing to enforce the right there. In the neighboring state, in such a case, it will not be considered a right. If the enforcement of the statutory right in a neighboring state in the manner proposed will work injustice to its citizens, considerations of comity do not require the recognition of it by the courts of that state."

That is the precise ground upon which, in the main, it was held in Finney v. Guy that our courts should not be used to coerce our citizens to perform Minnesota obligations in the manner attempted, particular reasons therefor being pointed out, all of which are present in the case before us, with others of an influential character. Then the way was open for the establishment here of precedent facts to the enforcibility of the stockholder's superadded obligation. No judgment, even in form, had been rendered in the Minnesota court, binding upon persons not parties to the litigation,—none which, in terms or by any statute, created an obligation for its recognition in the courts of this state under the "good faith and credit" clause of the federal constitution, as regards the force to be given to a judgment rendered in the court of one state in the courts of another. It was held here and affirmed by the federal court, that such clause cannot be successfully invoked to bar a resident of this state, who is a stockholder of a Minnesota corporation, the affairs of which are in process of settlement in an administration suit for the benefit of its creditors in a Minnesota Court to, which he is not a party, from litigating in the courts of this state all questions respecting the enforcibility of his extraordinary stockholder's liability where it is sought in such courts to recover thereon by the representative of the creditors appointed by the home court; that such a stockholder is not a party to the original suit as to such extraordinary liability merely because the corporation is, since such lia-

bility is in no sense an asset of the corporation. Now we face a Minnesota legislative enactment to the effect that the court in such original suit may, in a summary proceeding to which such a stockholder is not a party, fix the amount for which he must respond upon such extraordinary liability, and the time when and the person to whom the same must be paid, and that the determination shall be regarded as a bar to every defense to such liability in any court anywhere. It is hard to conceive of anything more drastic than that. The literal effect thereof is to make the Wisconsin court in this case a mere instrument to execute the commands of a foreign court against one of its citizens in a proceeding to which he was not a party and may not even have had notice of. It is useless to discuss such an unreasonable proposition as that a mere legislative enactment of a state has such extraterritorial force that it can so supplement the authority of its courts as to make their judgments and orders as to persons over which they have no jurisdiction and who reside in another state, binding upon such persons in the courts of such other state, when otherwise they would not be.

It is conceded that the analysis made here in Finney v. Guy, of the judicial situation in Minnesota, after the decision in Hanson v. Davison, 73 Minn. 454, 76 N. W. 76 N. W. 254, was fully sustained by the federal supreme court; but it is said that Hale v. Allison, 188 U. S. 56, 23 Sup. Ct. 244, where the court spoke most decidedly on the subject, does not govern because of the enactment above mentioned. As evidence thereof it is pointed out that, while the federal supreme court in Hale v. Allison allowed a "writ of certiorari" to the circuit court of appeals of Pennsylvania and sustained the latter in holding that a Minnesota receiver could not, in a court outside of its boundaries, enforce the superadded liability of stockholders, the Minnesota law of 1899 not being involved,—in Burget v. Robinson, 123 Fed. 262, decided in the circuit court of appeals for the district of Massachusetts, precisely the same kind of a case, where such law was involved, a writ applied for to review a judgment of the court of appeals of Massachusetts where the receiver's suit was successfully entertained, was refused. The difficulty with that is this: Hale v. Allison went on the ground that a Minnesota receiver, as the mere arm of the court, unaided by legislative authority, has no title to the claims of creditors of a corporation against its stockholders on account of the latter's extraordinary liability, and therefore cannot sue in a foreign jurisdiction to enforce the same. Having thus effectually disposed of the case, the court proceeded to consider whether a receiver should be permitted to pursue a foreign stockholder in the manner attempted, even if he possessed title to the

claim against the latter, on the ground of its preventing a multiplicity of suits, and held to the contrary because no such prevention could thereby be accomplished, all parties concerned not being before court; that the judgment of the Minnesota court was not binding upon the foreign stockholder as to any question concerning his extraordinary liability, because he was not a party to the litigation in such court; that the rule that a stockholder of a corporation is bound by a judgment against it, as in such cases as Parker v. Stoughton M. Co., 91 Wis. 174, 64 N. W. 751, does not apply to proceedings to enforce such extraordinary liability, the latter not being an asset of the corporation; that the suit in a foreign court to enforce the same pursuant to the judgment of the home court is not, properly speaking, ancillary to the main suit, an order or judgment in the latter not being binding upon the foreign stockholder as to such liability who is not a party thereto. Thus it will be seen that the law of comity was not there involved. The real defect in the cause of action was in that the receiver had no title to the liability sought to be enforced. That having been changed by the Minnesota law of 1899 prior to Burget v. Robinson, supra, the federal supreme court refused to interfere with the decision of the circuit court of appeals of Massachusetts, in that case entertaining the receiver's suit against the foreign stockholder. This court, in Finney v. Guy, 106 Wis. 256, 82 N. W. 595, did not ground its decision on the fact that the receiver did not possess a sufficient title to the claim sought to be enforced to entitle him to the remedy invoked. If it had, the new law of Minnesota might well be said to present a new question. The decision here was grounded on the idea that it is contrary to the policy of our laws to allow our citizens to be pursued in the manner there proposed, and that to permit our courts to be used as desired would inflict injustice upon our people, the protection of whom is the primary duty of such courts. As above indicated, the federal supreme court held this court to be supreme in its own jurisdiction in that field. The new situation, if one is created by the law of 1899, adds force to what was formerly said as regards the law of comity, liberally applied, not requiring the use of Wisconsin judicial facilities in the manner proposed.

A comparison of the complaint in Finney v. Guy with that before us shows very clearly that no claim is made in the latter not insisted upon in the former. While the law of 1899 is pleaded in the one and not in the other, in both the plea is made that, by its judicial policy independenlty of the new legislation, an ancillary action will lie against the stockholder not brought into the main action by service of process on him, to enforce his extraordinary liability, in which

second action the determination in the main suit as to the necessity to enforce such liability, and the extent thereof, is deemed binding upon the theory that the corporation defendant in such main suit stands therein for absent stockholders. The act of legislature under consideration is grounded wholly on that doctrine. Of course, such an enactment can have no greater extraterritorial force than the judgment of a court as to a person over whom it has no jurisdiction. That the purpose of the law of 1899 was merely to accomplish, by a somewhat different way, what was held to be within the power of the courts of Minnesota to accomplish before, to merely change the procedure for the enforcement of the extraordinary liability of corporate stockholders within the lines theretofore set by the judicial policy of the state and the construction of existing statutes, not giving any new right, strictly so called, or varying any old one, is plainly declared in Straw & E. Mfg. Co. v. Kilbourne B. & S. Co., 80 Minn. 125, 83 N. W. 36. It is there said, in effect, that the new law is a mere remedial measure. Obviously, such a measure adopted in one state can add nothing to nor take anything from a right as regards the use of the judicial instrumentalities of another state to enforce it."

The case where the supreme court of Wisconsin goes more fully into the consideration of the reasons why it is against the public policy of that state to permit such an action as the one at bar is Finney v. Guy, 106 Wis. 256 and which was affirmed by this court in 189 U. S. 335.

ARGUMENT.

1. *The question of "full faith and credit" is not involved in this case.*

It is contended by counsel for plaintiff in error that the Wisconsin court in refusing to permit the courts of Wisconsin to be used for the enforcement of this claim has failed to give full faith and credit to the "interlocutory decree" of the Minnesota court in levying the asessment upon the capital stock of the insolvent corporation. A careful consideration of the order making this assessment will demonstrate that it is not such a decree as is contemplated by the Federal Constitution requiring that full faith and credit should be given to it.

The statute in question (Sec. 3) permits the court to consider "by affidavit or otherwise, the proofs "as to the probable indebtedness of the corporation and the expense of said assignment or receivership and the probable amount of assets available for the payment of such

indebtedness and expense and also what parties are, or may be, liable as stockholders of said corporation and the nature and extent of such liability and if it appear to the satisfaction of the court that the ordinary assets of said corporation, or such amount as may be realized therefrom within a reasonable time, will probably be insufficient to pay and discharge in full and without delay its indebtedness, and expenses of such assignment or receivership, and that it is necessary or proper that resort be had to such liability of its stockholders the said court shall thereupon, by *order*, direct and levy a rateable assessment upon all parties liable as stockholders, or upon or on acount of any stock or shares of said corporation, for such amount * * * as the court in its discretion may deem proper * * * and shall direct the payment of the amount so assessed" etc. Sec. 5 provides "said *order* and the assessment thereby levied shall be conclusive upon and against all parties liable upon or on account of, any stock or shares of said corporation *whether appearing or represented at said hearing, or having notice thereof or not* as to all matters relating to the amount of, and the propriety of and the necessity for the said assessment.

The statute itself in every section thereof speaks of this merely as an "*order.*" It does not contemplate or assume that it has the force and effect of a decree or judgment against the stockholders but at most that the order is only evidence of facts to be used in case actions are brought against the stockholders because, by Sec. 4 of this act, such order must direct the receiver to commence actions against the stockholders who do not voluntarily pay, to collect the assessment. Such actions the statute provides, may be brought either in the state of Minnesota or elsewhere.

That an assessment made by the court upon the stock of an insolvent Minnesota corporation and upon the stockholders thereof in an action to sequester the assets of the corporation is not such a judgment against the stockholders as to come within the full faith and credit clause of the Federal Constitution was held by this court in Hale v. Allison, 188 U. S. 56. The court on p. 80 says:

> "There remains the further question of maintaining the suit on the ground that it is ancillary, or auxiliary, to the decree of the Minnesota court and aids in its enforcement. We think this contention cannot be sustained.
>
> In the first place all the nonresident stockholders were but nominal parties in the Minnesota suit. Their names were merely placed in its title. No service of process was ever made on one of them and as the suit was not one in which

service by publication of process could be ordered, there was nothing in the nature of the suit to give them notice or to enable the court to give judgment against them without their appearing. The court did not assume to give any such judgment. * * * The complainant claims that the non-resident stockholders are bound because the corporation was a party, not because they were parties to the suit. There is no decree or judgment, therefore, against the stockholders who were nonresidents. The claim that they are bound by certain findings of fact by the court, because of the corporation being a party and in law representing them to that extent, assuming it for this purpose to be well founded, is far from transforming a decree against resident stockholders into one against non-residents who were not parties to the action. Even assuming that the decree concludes them upon certain facts found in that action where there was no decree against them, still, another action in another jurisdiction to enforce their liability as originally created by statute cannot, within any reason, be said to be one to enforce the former judgment. *Indeed it is because of the very fact that no judgment was or could be obtained against the non-resident stockholders in the Minnesota suit that the Pennsylvania Federal Court is asked to exercise its jurisdiction and give judgment against the defendants on their statutory liability. This does not make the Pennsylvania suit ancillary to the Minnesota decree for the purpose of enforcing it, for there is no decree against them to be enforced. There is only a claim that they are bound by certain facts found in another action to which they were not parties in any but a merely formal and nominal sense."* (Italics our.)

2. *The corporation is not the representative of the stockholder in the sense that it can represent him in making an assessment upon his stock, so as to establish a personal liability.*

Hale v. Allison, *supra.*
Opinion of Canty Justice in Hanson v. Davison, 73 Minn. 454.
Willus v. Mann, 91 Minn. 494.
Lageman v. Casserly, 107 Minn. 491 (494).
Finney v. Guy, 106 Wis. 256.
Danforth v. Chemical Co., 68 Minn. 308.
Schrader v. Manufacturers' Bank, 133 U. S. 67.

It is claimed by counsel for plaintiff in error that the defendant was represented by the corporation itself upon the making of this assessment. This court has spoken in no uncertain tone in Hale v. Allis, *supra*, in the passage just quoted holding that while the corporation may for the purpose of establishing certain evidentiary fact be held to represent the stockholder it does not, or cannot, represent him in any matter relating to his personal liability.

The holding of the Minnesota court is no less uncertain.

In the case of Hanson v. Davison, 73 Minn. 454 Justice Canty in delivering the dissenting opinion of the court says (p. 463):

> "Neither can I concur in that part of the opinion which holds that a judgment in an action under Chapter 76 G. S. 1878 determining the amount of corporate debts is conclusive on a stockholder who was not made a party to the action. A judgment taken against the corporation while it was a going concern is conclusive against the stockholders. But a judgment in an action commenced after the assets of the corporation have been sequestered in insolvency proceedings is of no effect against the stockholders. Danforth v. National Chem. Co., 68 Minn. 308; Schrader v. Manufacturers Nat. Bank, 133 U. S. 67, 77. * * * When the corporation is a going concern, it represents all of its stockholders in defending actions brought against it, and that is the reason why stockholders are bound by a judgment taken against it at such a time. But after the corporation goes into liquidation, it ceases to represent its stockholders—at least as to their superadded liability. The majority admit this by admitting that all of the stockholders within the jurisdiction are necessary parties to an action to enforce that liability. It is the first time I have ever heard the doctrine laid down by a court that you may neglect to bring in a necessary party to the action and yet bind him as conclusively by the result as if he had been brought in. It seems to me that this is a most extraordinary doctrine."

That this very able opinion states the law as it had been theretofore declared by the Minnesota court is shown by the Wisconsin court in Finney v. Guy, 106 Wis. 256. That it correctly states the law on this point in Minnesota appears from the subsequent decisions of that court.

In Willius v. Mann, 91 Minn. 494, decided since the enactment of chap. 272, laws of 1899, a bank had become insolvent and made an

assignment for the benefit of creditors. Thereafter a scheme of reorganization was presented to the court as provided by the Minnesota statute and the bank was reorganized with one-half its former capital. Later on it again became insolvent and a receiver was appointed in an action to sequester the assets of the corporation. On his petition an assessment was made on all the stockholders, old and new, of the bank. On appeal by stockholders of the old bank, who were not stockholders of the new bank, it was contended that the judgment of the court upon the reorganization of the bank continued and preserved the liability of all stockholders, whether stockholders in the new bank or not, they having been represented by the corporation. The court, however, rejects this contention (p. 503) as follows.

> "But it is contended by respondent that the liability of all stockholders, whether members of the new bank or not, was continued and preserved by the judgment adopting and effectuating the plan of reorganization. The portion of the judgment relied upon in support of the claim expressly provides that none of the stockholders of the bank, past or present, shall in any way, or to any extent, be released from any liability existing at the time of the reorganization. It is clear that this judgment cannot have the force and effect contended for. The sockholders of the old bank who did not become members of the new, such as appellants in the case, were not parties to the reorganization proceedings. They were not served with notice of the pendency of the proceeding, except by publication, which was insufficient to warrant a personal judgment against them, and were clearly not bound by the judgment, in so far, at least, as concerns their personal liability.
>
> "It is true that, in proceedings against a corporation, the corporation, when duly summoned and brought into court, represents the stockholders; and all stockholders, in so far as the interests and affairs of the corporation are concerned are bound by the judgment of the court. But the stockholders are not bound by any such judgment as respects their individual interests or liability. * * *
>
> "The case of Holland v. Duluth, Minn. & Dev. Co., 65 Minn. 324, does not sustain respondent's contention. It was held in that case that the stockholders were bound by a judgment against the corporation as to the liability of the corporation and the amount of the recovery, but the individual liability of the stockholder was in no way involved in the action. The action concerned the affairs of the corporation itself, and not the personal liability of the stockholders."

In Lageman v. Casserly, 107 Minn. 491 (494), an action to collect an assessment from defendant upon his stock liability as a stockholder in the Germania Bank involved in the case of Willus v. Mann, *supra*, the court says: "Willus v. Mann was an action against certain stockholders, of which appellant was not one. * * * For certain purposes the stockholders of the corporation were in court through representation by the corporation, and in so far as the interests and affairs of the corporation are concerned they are bound by the judgment. But they are not bound as respects their individual interests, and, when sued as shareholders, they have a right to assert any defense personal to themselves."

The Wisconsin supreme court in Finney v. Guy, *supra*, p. 274, says:

"It is recognized that it would be unjust to bind a stockholder by an adjudication in an action to which he is not a party; but it is said that such is not the result of the new doctrine because in the first action the corporation stands for all its stockholders who are not present. How that can be is easy to assert, but exceedingly difficult to demonstrate upon principle. The cases cited by the court (Minnesota) do not appear to touch the question, as clearly indicated in the able dissenting opinion of Mr. Justice Canty. We shall not take time to review the authorities which the learned court refers to, to sustain its position on this branch of the case; suffice it to say that they are all cases to enforce corporate rights. * * * Not one is a case to enforce a superadded liability of stockholders to creditors or cases involving any analogous question.

"The corporation is not made a defendant in the principal action as a representative of the stockholders in any sense. It is joined of necessity only where there are corporate assets which ought to be applied to the payment of the debts. Otherwise it is a proper party, but only for the purpose of establishing against it as a finality the amount of the indebtedness for which the stockholders are liable. As an incident thereto, where there are corporate assets which should be applied to the payment of the indebtedness, the corporation must be brought in for the purpose of sequestering and reaching such assets. If there are no such assets the corporation need not be made a party at all. That has been repeatedly held by this and other courts. Booth v. Dear, 96 Wis. 516; Steeper v. Goodwin, 67 Wis. 577; In re People's L. E. Ins. Co., 56 Minn. 180; Minneapolis B. Co. v. City Bank, 66 Minn. 441."

Again at p. 277 the court says:

> "The doctrine of the Hanson case, 73 Minn. 454, is not sustained, in its main features, in the home court, upon any other theory than that the corporation in the original action stands for all the absent members, and that a judgment as to it, after it has ceased to exist for any practical purpose, concludes such absent members on questions in which the corporation has no interest and as to which it is not bound to protect their interest."

In Hale v. Allison, *supra*, this court carefully considers and rejects the principle claimed to have been established in the majority opinion of the Minnesota court in the case of Hanson v. Davison.

In Danforth v. Chemical Co., 68 Minn. 308, where an action was brought to sequested the assets of an insolvent corporation and thereafter a judgment was obtained by default against the corporation the court in an action brought on a claim against the corporation recognized the principle for which we contend and held that a complaint, filed by such judgment creditor, in an action to sequester the assets of the corporation which complaint was based solely upon such judgment recovered in the action brought by such judgment creditor against the corporation, did not state a cause of action against such corporation.

In Schrader v. Manufacturers Bank, 133 U. S. 67 (76–7) it was held that a judgment obtained against a corporation after it had gone into liquidation was not conclusive and might be re-examined.

3. *It has always been the law of Wisconsin, and was always the law of Minnesota until the enactment of chap. 272, laws of 1899, that upon the insolvency of a corporation whose stockholders were subject to a double liability the only remedy the creditors had to enforce that liability was by an action brought by all the creditors or by one or more creditors on behalf of all against the corporation and all of the stockholders to wind up the corporation, sequester its assets and enforce the double liability of the stockholders and that the judgment as to such double liability bound only such of the stockholders as could be personally served with process within the jurisdiction of the court or should voluntarily appear in the action and that no other action could be brought to enforce such liability either in the state in which the insolvent corporation was located or elsewhere.*

In re Martin's Estate, 56 Minn. 420.
Allen v. Walsh, 25 Minn. 543.
Merchants National Bank v. Bailey Mfg. Co., 34 Minn. 323.
Minneapolis Base Ball Co. v. City Bank, 66 Minn. 441.

Hanson v. Davison, 73 Minn. 454.
Coleman v. White, 14 Wis. 700.
Cleveland v. Marine Bank, 17 Wis. 545.
Merchants Bank v. Chandler, 19 Wis. 434.
Terry v. Chandler, 23 Wis. 456.
Hurlbut v. Marshall, 62 Wis. 590.
Gianella v. Biglow, 96 Wis. 185.
Booth v. Dear, 96 Wis. 516.
Gager v. Marsden, 101 Wis. 598.
Foster v. Posson, 105 Wis. 99.
Finney v. Guy, 106 Wis. 256.
Eau Claire Nat. Bank v. Benson, 106 Wis. 624.
Hunt v. Whenell, 122 Wis. 33.
Hale v. Allison, 188 U. S. 56.
Finney v. Guy, 189 U. S. 335.

The reasons for this rule are stated by the Minnesota court in In re Martin's Estate, *supra*, pp. 422–3, and by the Wisconsin court in Finney v. Guy and Hunt v. Whenell, *supra*. The Minnesota court attempted, in the case of Hanson v. Davison, to establish the doctrine that an ancillary action might be brought either in that state or elsewhere against stockholders not originally served with process in the action to sequester the assets of the corporation but this court, in the case of Finney v. Guy, *supra*, p. 344, analyzed the Minnesota decisions showing that the law of Minnesota and Wisconsin had always been as stated at the head of this subdivision of this brief and that the opinion in the Hanson case "is only the opinion of the very able judge who gave it, upon an abstract proposition," etc.

4. *Chapter 272, laws of Minnesota for the year 1899, and the amendments thereto have not changed the legal aspect of this case.*

Every question raised by counsel for paintiff in error in this case was raised and insisted upon both in the Wisconsin supreme court and in this court in the Finney case and decided adversely to such contention.

It is claimed by counsel that the Minnesota legislature has since the decision of the Finney case specifically authorized the receiver appointed in an action to sequester the assets of an insolvent corporation to commence an action against any stockholder to recover the amount of any stock assessment either in Minnesota or elsewhere; further that under the law as it now stands the receiver is also the representative of the creditors, having the right of an assignee to their legal right to have an assessment ordered upon the stockholders' liability.

In reference to the first point we would say that the questions in this case as in the Finney case, arise as matters pleading upon the sufficiency of the complaint. It is alleged in the complaint at bar that it is the law of Minnesota that an action will lie either in Minnesota, or elsewhere, to enforce the double liability of a stockholder who was not a party to the original action to sequester the assets of the corporation. Such was also the allegation of the complaint in Finney v. Guy (106 Wis., pp. 258-260). In Hunt v. Whenell, *supra*, decided by the Wisconsin court since the enactment of the Minnesota law of 1899 and which case, like the Finney case and the case at bar, was decided upon the sufficiency of the complaint upon a demurrer thereto it was urged that since the decision of the Finney case the Minnesota legislature has by chap. 272, laws of 1899, provided a new remedy and hence the Finney case was not in point. In answer to this contention the court in that case says (p. 42):

> "A comparison of the complaint in Finney v. Guy with that before us shows very clearly that no claim is made in the latter not insisted upon in the former. While the law of 1899 is pleaded in the one and not in the other, in both the plea is made that, by construction put upon the law of Minnesota and by its judicial policy independently of the new legislation, an ancillary action will lie against a stockholder not brought into the main action by service of process on him, to enforce his extraordinary liability, in which second action the determination as to the necessity to enforce such liability, and the extent thereof, is deemed binding on the theory that the corporation defendant in such main suit stands therein for absent stockholders. The act of the legislature under consideration is grounded wholly on that doctrine. Of course, such an enactment can have no greater extraterritorial force than the judgment of a court as to a person over whom it has no jurisdiction. That the purpose of the law of 1899 was merely to accomplish, by a somewhat different way, what was held to be within the power of the courts of Minnesota to accomplish before, to merely change the procedure for the enforcement of the extraordinary liability of corporate stockholders within the lines theretofore set by the judicial policy of the state and the construction of existing statutes, not giving any new right, strictly so called, or varying any old one, is plainly declared in Straw & E. Mfg. Co. v. Kilburne, B. & S. Co., 80 Minn. 125. It is there said in effect that the law is a mere remedial measure. Obviously, such a measure adopted in one state can add

> nothing to nor take anything from a right as regards the use of the judicial instrumentalities of another state to enforce it."

But it is claimed by counsel that since the enactment of chap. 272, laws of Minnesota for 1899, the receiver appointed in an action to sequester the assets of an insolvent corporation is not only the arm of the court in sequestering the assets of the corporation but that he may, as assignee of the right of the creditors bring an action to enforce the double liability of the stockholders—in other words that he, as representing the creditors, may do what the creditors themselves could do if the action were brought by them. The case of Finney v. Guy would seem to be fatal to such contention. By reference to that case (106 Wis. 260) we find:

> "There were further allegations in the complaint showing that the receiver appointed in the creditors' action at the domicile of the corporation, *and all the creditors whose claims were established in such action and entitled to participate in the benefits of the stockholders' liability, are joined as plaintiffs in this action*, that they came to this state after having exhausted all remedies at the domicile of the corporaion for the satisfaction of their claims, that they instituted this action against the defendant stockholder in this state because she could not be reached in the original action, and that this action is ancillary to the action brought at the home of the corporation."

Even if the contention of counsel were correct that the amendment of 1899 wrought a change in the law of Minnesota and gave the receiver, as assignee of the right of the creditors to enforce the stockholders double liability, the right to bring an action therefor, we fail to see how that helps plaintiff's case, for certainly the receiver, as assignee of the right of the creditors to bring such action under the law as now amended could have no greater, or better, right to bring such actions than all the creditors themselves could have had to bring such action under the statute before it was amended and as we have seen in the Finney case decided previous to the amendment of 1899 all the creditors were united with the receiver as plaintiffs in the action to enforce the double liability but the Wisconsin court held that such action could not be maintained and this court, upon writ of error, sustained the Wisconsin court in its decision, holding that no federal question was involved.

The statute of 1899 does not, in terms, make the receiver the assignee of the title of the creditors to the double liability of the stock-

holders. It simply authorizes him to commence actions to recover upon such liability just as he may commence actions to recover any asset of the corporation. He is simply the arm of the court, appointed for the purpose of liquidating the property of the corporation, winding up its affairs, etc., and the statute of 1899 does not give him any higher right in reference to the double stock liability than he has to the other assets available for the payment of creditors. Indeed, if there is any difference in the character of his right or power in the two classes of cases it is greater in the latter, for as to them he has all the power of a chancery receiver, while as to the former he has no power except that conferred upon him by statutory authority. He may, in either case, sue to recover such asset provided he proceed in the forum where such action is brought according to the remedy provided by that forum and provided further that such action be not against the public policy of the state where brought.

5. *Whether or not a right exists depends on the law of the state where it was created; the remedy for enforcing such right depends upon the law of the forum where it is sought to be enforced.*

> Herrick v. Minneapolis & St. Louis Ry. Co., 31 Minn. 11.
> Northern Pacific Railroad v. Babcock, 154 U. S. 190 (197).
> Marshall v. Sherman, 148 N. Y. 9.
> Leucke v. Treadway, 45 Mo. App. 507.

In Marshall v. Sherman, *supra*, the court says that if under any circumstances an action against stockholders of a foreign corporation could be maintained,

> "it must be in such form and by such modes of procedure as like liabilities created under our own statutes are enforced against our own citizens. There is no reason why the plaintiff should be permitted to enforce his debt in this jurisdiction against a citizen of this state in a form of action different from that which a creditor of a domestic corporation may prosecute against a domestic stockholder."

In Leucke v. Treadway, *supra*, it is said that what the remedy against stockholders in a foreign corporation would be in the state in which it is created is not important in determining the form of remedy to be followed in the state where the stockholders reside, but the remedy to be followed will be determined by the law of the forum.

In Herrick v. Minneapolis & St. Louis Ry. Co., 31 Minn. 11 the court in speaking of rights acquired under a statute of another state and their enforcement says:

> "In such case the law of the place where the right was acquired, or the liability was incurred will govern as to the right of action; while all that pertains merely to the remedy will be controlled by the law of the state where the action is brought, and we think the principle the same whether the right of action be *ex contractu* or *ex delicto* * * *.
>
> It is elementary that the remedy is governed by the law of the forum and this is all that is held by the court in support of their opinion."

The language of the above case is cited with approval by this court in Northern Pacific Railroad Co. v. Babcock, 154 U. S. 190 (197).

Plaintiff in this action asks the Wisconsin court to enforce defendant's alleged liability in a form unknown to the Wisconsin court for the enforcement of the rights of its own citizens against stockholders in Wisconsin corporations and when such enforcement would in the judgment of the Wisconsin court result in a miscarriage of justice. The mere statement of the proposition shows the soundness of the position of the Wisconsin court.

6. *A receiver has no extraterritorial jurisdiction or power of official action and is not entitled, as matter of right, to sue in a foreign jurisdiction; and the refusal of another state to entertain such suit does not amount to failure to give full faith and credit to the laws and judgments of the state of appointment within the meaning of the Federal Constitution.*

> High on Receivers, Sec. 239.
> Booth v. Clark, 17 How. 322.
> Filkins v. Nunnemacher, 81 Wis. 91.
> Farmers' & Merchants' Ins. Co. v. Needles, 52 Mo. 17.
> Brigham v. Luddington, 12 Blatchf. 237.
> Hagard v. Durant, 10 Fed. Rep. 471.

In High on Receivers, Sec. 239 the doctrine is thus stated:

> "Upon the question of the territorial extent of a receiver's jurisdiction and powers, for the purpose of instituting actions connected with his receivership, the prevailing doctrine, established by the supreme court of the United States and sus-

tained by the weight of authority in various states is that the receiver has no extraterritorial jurisdiction or power of official action, and cannot, as a matter of right, go into a foreign state or jurisdiction and there institute a suit for the recovery of demands due to the person or estate subject to his receivership. His functions and powers for the purposes of litigation, are held to be limited to the courts of the state within which he was appointed, and the principles of comity between nations and states, which recognize the judicial decisions of one tribunal as conclusive in another, do not apply in such a case, and will not warrant a receiver in bringing an action in a foreign court or jurisdiction. * * * And the refusal of a court of a state other than that in which the receiver was appointed to entertain such an action by the receiver does not amount to a failure to give full faith and credit to the laws and judgment of the state of appointment within the meaning of the Federal Counstitution."

In Booth v. Clark, *supra*, the leading case on this subject, the court says:

"He (the receiver) has no extraterritorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court or another jurisdiction, as the judgment creditor himself might have done, where his debtor may be amenable to the tribunal which the creditor may seek. In those countries of Europe in which foreign judgments are regarded as a foundation for an action, whether it be allowed by treaty stipulations or by comity, it has not yet been extended to a receiver in chancery. In the United States where the same rule prevails between the states as to judgments and decrees, aided as it is by the first section of the fourth article of the constitution, and by the act of congress of May 26th, 1790, by which full faith and credit are to be given in all the courts of the United States, to the judicial sentences of the different states, a receiver under a creditor's bill has not as yet been an actor as such in a suit out of the state in which he was appointed. This court considered the effect of that section of the constitution and of the act just mentioned in McElmoyle and Cohen, 13 Pet. 324–327. But, apart from the absence of any such case, we think that a receiver could not be admitted

to the comity extended to judgment creditors without an entire departure from chancery proceedings as to the manner of his appointment, the securities which are taken from him for the performance of his duties and the direction which the court has over him in the collection of the estate of the debtor, and the application and distribution of them. If he seeks to be recognized in another jurisdiction, it is to take the fund there out of it without such court having any control of his subsequent action in respect to it, and without his having even official power to give security to the court, the aid of which he seeks, for his faithful conduct and official accountability. All that could be done upon such an application from a receiver, according to chancery practice, would be to transfer him from the locality of his appointment to that where he asks to be recognized, for the execution of his trust in the last, under the coercive ability of the court; and that it would be difficult to do, where it may be asked to be done, without the court exercising its province to determine whether the suitor, or another person within its jurisdiction, was the proper person to act as receiver."

7. *The statutes of a state have no extraterritorial force. A foreign receiver cannot, as matter of right, maintain an action outside of the state of his appointment. He is often permitted through comity, or the courtesy of a sister state, to maintain an action therein; but never where the courts of such sister state have declared the maintenance of such action to be against the public policy of that state or that the rights of its citizens would be thereby jeopardized or impaired.*

High on Receivers, Sec. 241.
Comstock v. Frederickson, 51 Minn. 350.
Mercantile National Bank v. MacFarlane, 71 Minn. 497.
Hanson v. Davison, 73 Minn. 454 (455).
Herrick v. Minneapolis & St. Louis Ry. Co., 31 Minn. 11 (13).
New Haven Horse Nail Co. v. Linden Spring Co., 142 Mass. 349.
Post & Co. v. Toledo, Cincinnati & St. Louis Railroad Co., 144 Mass. 345.
Higgins v. Central New England Railroad, 155 Mass. 176.
Howarth v. Lombard, 175 Mass. 570 (573).
Smith v. Mutual Lif eIns. Co., 96 Mass. 336.
Rice v. Hosiery Co., 56 N. H. 114 (127).
Nimick & Co. v. Mingo Iron Works Co., 25 W. Va. 184.
Rover on Interstate Law, 167-8.

Foster v. Glazener, 27 Ala. 391.
Stevens v. Brown, 20 W. Va. 450 (460-1).
Gilman v. Ketchum, 84 Wis. 60.
Sobemheimer v. Wheeler, 45 N. J. Eq. 614.
Disconto Gesellschaft v. Umbreit, 127 Wis. 651.
Bagby v. A. M. & O. R. Co., 86 Pa. St. 291.
Falk v. Jones, 49 N. J. Eq. 484.
Finney v. Guy, 189 U. S. 335 (345).
Rorer on Interstate Law 226.

High on Receivers, Sec. 241 thus states the rule.

"While, as it is thus seen, the courts have generally denied the receiver's extraterritorial right of action as a question of strict right, it has frequently been recognized as a matter of comity. Thus it has been held that receivers of a foreign corporation, appointed in other states, might sue in New York, in their official capacity, *in cases where no detriment would result to citizens of the latter state*, the privilege of thus suing being regarded as rather upon courtesy than upon strict right, and the courts declining to extend their comity so far as to work detriment to citizens of their own state who have been induced to give credit to the foreign corporation. And the same doctrine prevails in Minnesota. * * * Upon similar grounds of comity it is held in Pennsylvania, that when a receiver is appointed over a railway in another state, the courts of Pennsylvania will recognize his right to property of the railway company in Pennsylvania, *when not in conflict with the rights of citizens of that state.* * * * It is also held in New Jersey, that a New York receiver appointed in proceedings supplementary to execution in behalf of a judgment creditor residing in New Jersey, may maintain an action in the latter state for the recovery of the debtor's property located there, *the rights of no New Jersey creditors being impaired by the proceeding.*"

In Comstock v. Frederickson, *supra*, the Minnesota court says:

"Strictly, the statutory powers of a foreign assignee or receiver cannot *ex proprio vigore* be recognized as having any force or effect here, but, by the comity existing between the states, which is recognized as a part of the common law, effect may be given to titles and powers derived from the laws of another state or country, by the courts of that state, when this

can be done *without contravening the laws or policy of the state*, or interferring with the rights of creditors pursuing their remedies under our laws."

In Hanson v. Davison, supra, the Minnesota court expressed the opinion that under the law as it then stood they saw nothing in the statute to preven ta subsequent action by the receiver either in Minnesota or in another state to recover from a stockholder on his double liability *"if the comity of the sister state would permit it."*

In Herrick v. Minneapolis & St. Louis Ry. Co., *supra*, the Minnesota court says:

> "Whenever by either common law or statute, a right of action has become fixed and a legal liability incurred, that liability, if the action be transitory, may be enforced, and the right of action pursued, in the courts of any state which can obtain jurisdiction of the defendant, *provided it is not against the public policy of the laws of the state where it is sought to be enforced. The statute of another state has, of course, no extra-territorial force, but rights acquired under it will always, in comity, be enforced, if not against the public policy of the former.*"

In Finney v. Guy, 189 U. S. 335 (345) this court, after considering the alleged Federal questions involved says:

> "Whether aside from the Federal considerations just discussed, the Wisconsin court should have permitted this action to be maintained, because of the principle of comity between the states is a question exclusively for the courts of that state to decide. The right to maintain it under the facts of this case is not founded upon any provision of a Federal nature and we cannot supervise the action of the Wisconsin court in this particular."

In New Haven Horse Nail Co. v. Linden Spring Co., 142 Mass. 349 an action in which the plaintiff, a Connecticut corporation brought suit against another Connecticut corporation and certain stockholders, residents of Massachusetts to recover from such stockholders the amount of the debt of the latter corporation to the plaintiff corporation the court says (p. 353):

> "The liability of stockholders in a Connecticut corporation must be determined by the laws of that state (citing authori-

ties). That the statutes of a state do not operate extraterritorily, *proprio vigore* will be conceded. How far they should be enforced beyond the limits of the state which has enacted them must depend on several considerations; as whether any wrong or injury will be done to the citizens of the state in which they are sought to be enforced, whether the policy of its own laws will be contravened or impaired, and whether its courts are capable of doing complete justice to those liable to be affected by their decrees."

In Higgins v. Central New England & Western Railroad, 155 Mass. 176 the supreme court of Massachusetts state the grounds upon which the courts of one state entertain an action at law founded upon the statutes of another state as follows:

"Assuming that the cause of action is one not existing at the common law, but created by the statute of another state, we have seen that it is transitory and that it survives and passes from the deceased to his administrator. When an action is brought upon it here, the plaintiff is not met by any difficulties upon these points. Whether our courts will entertain it depends upon the general principles which are to be applied in determining the question whether actions founded upon the laws of other states shall be heard here. These principles require that, in cases of other than penal actions, the foreign law, *if not contrary to our public policy, or to abstract justice or pure morals, or calculated to injure the state or its citizens, shall be recognized and enforced here, if we have jurisdiction of all the parties, and if we can see that, consistently with our own forms of procedure and law of trials we can do substantial justice between the parties. If the foreign law is a penal statute, or if it offends our own policy, or is repugnant to justice or to good morals, or is calculated to injure this state or its citizens, or if we have not jurisdiction of parties who must be brought in to enable us to give a satisfactory remedy, or if under our forms of procedure an action here cannot give a substantial remedy, we are at liberty to decline jurisdicton.*" Citing many cases.

In Howarth v. Lombard, 175 Mass. 570 (573), a case in which a receiver of a Washington bank was permitted to recover in Massachusetts upon a stockholder's double liability under the peculiar wording of the Washington statute, there being no public policy of the state of Massachusetts to prevent, the court lays down the principle

which should govern courts in determining whether they will permit actions, such as the one at bar, to be brought as follows:

> "If the statute creating the right is against the policy of the law of the neighboring state, that is a sufficient reason for refusing to enforce it here. In the neighboring state, in such a case, it will not be considered a right. If the enforcement of a statutory right in a neighboring state in the manner proposed will work inustice to its citizens, considerations of comity do not require the recognition of it by the courts of that state. * * * If it is of such a kind that, with due regard for the interests of the parties, a proper remedy can be given only in the jurisdiction where it is created, it will not be enforced elsewhere."

In Rice v. Hosiery Co., 56 N. H. 127, the court say:

> "The laws of a foreign state do not operate beyond its territorial limits *ex proprio vigore* but only *ex comitate*. The courts of a state where the laws of a foreign state are sought to be enforced, will use a sound discretion as to the extent and mode of that comity: they will not permit their tribunals to be used for the purpose of affording remedies which are denied to parties in the jurisdiction of the state that enacted the law and which tend to operate with hardship on heir own citizens and subjects."

In Nimick & Co., v. Mingo Iron Works Co., 25 W. Va., 184, a judgment creditor of an Ohio corporation (in which state there was a double liability on the part of the stockholder) commenced in the West Virvinia court in his own behalf and in behalf of the other creditors an action against an insolvent Ohio corporation and the stockholders resident in West Virginia to ascertain and determine the extent of the personal liability resting upon them for the payment of the debts of the corporation and to enforce payment of the same the court, upon demurrer to the complaint, declined to permit the action to be maintained and in answer to the contention of counsel that as a contract liability was shown on the part of the defendants to pay the additional liability the court should permit the action to be maintained, the court (p. 198) says:

> "It remains for us to consider whether the liability herein declared to exist against the stockholders of the Mingo Iron Works Company is such a liability as can, or ought to be, enforced by the courts of this state against the defendant stockholders who are residents of this state, and who are not amen-

able to the jurisdiction of the courts of Ohio. It is contended by the counsel for the appellants that as the individual liability of the stockholders arises out of contract, and is not of the nature of a penalty, that upon the principle of comity the courts of this state ought to enforce and give effect to it. It is admitted that in ordinary cases, in matters of contract, where the remedy to be pursued is provided by the common law, and no specific remedy is prescribed by the laws of the place where the contract was made, the courts of one state, *ex comitate*, will entertain jurisdiction and enforce such contract against its own citizens, if there be no statute in force prohibiting them from doing so and the relief sought can be rendered and if it be not against the public policy of the state within which such contract is sought to be enforced. *But the courts of a state where the laws of a foreign state are sought to be enforced, will use a sound discretion as to the extent and mode of that comity.*

Rorer on Inter-state Law 226 says:

"It is a principal universally recognized, that laws have no extra-territorial force * * * Whenever the *municipal* laws proper of one state are recognized and enforced in another, it is merely by *comity* of the latter, and upon the presumption that they are tacitly adopted as matters of right when not inimical to its own laws or policy, or interests of its people. But this comity is never extended to the laws of remedy, but has been generally regarded as extending to matters *ex contractu*, or such torts as are in violation of natural right regarded as such among civilized people. Natural right being that which has the same force among all men."

In Foster vs. Glogener, 27 Ala. 391, the court says:

"It is a well settled principle of international law that every attempt on the part of one nation or state, by its legislation, to grant jurisdiction to its courts over persons or property not within its territory is regarded elsewhere as a mere userpation; and all judicial proceedings, in virtue of it, are held utterly void for every purpose."

In Stevens vs. Brown, *supra*, the court (P. 461) says:

"The effect given to the statutes of one state by the courts of a sister state, so far as they attempt to control the remedy, is

wholly an act of comity and not a recognition of a right And this comity will not be recognized, unless there is no reason to the contrary; it is extended only where there is no interest of the citizens of the state or of a sister state seeking to avail themselves of the protection or benefits of the *lex fori* to be injuriously affected by such recognition."

In Hunt vs. Whewell, 22 Wis. 33, the Wisconsin court in speaking of the principle upon which the Finney case was decided by that court says (P. 42):

"This court, in Finney vs. Guy, 106 Wis. 256, did not ground its decision on the fact that the receiver did not possess a sufficient title to the claim sought to be enforced to entitle him to the remedy invoked. If it had, the new law of Minnesota might well be said to present a new question. The decision here was grounded on the idea that it is contrary to the policy of our laws to allow our citizens to be pursued in the manner there proposed, and that to permit our courts to be used as desired would inflict injustice upon our people, the protection of whom is the primary duty of such courts. As above indicated the federal supreme court held this court to be supreme in its own jurisdiction in that field. The new situation, if one is created by the law of 1899, adds force to what was formerly said as regards the law of comity, liberally applied, not requiring the use of Wisconsin judicial facilities in the manner proposed."

8. *Whether or not a complaint in a state court states a cause of action, no Federal question being involved, is exclusively for the state court to determine.*

This court in the Finney case, 189 U. S. 335 (339) says:

"It is stated by the supreme court of Wisconsin that that state for many years has had a statute for the enforcement of the liability of stockholders in corporations similar to that which exists in Minnesota, and that it had been frequently decided under such statute that an action of the nature of the one at at bar could not be maintained in her courts, *and also that it was against the public policy of Wisconsin to permit it;* that the remedy under the Wisconsin statute was exclusive, and consisted in a suit in equity at the home of the corporation, in the nature of a partnership accounting, the parties to which would be all the creditors or a creditor in his behalf and in

behalf of all others similarly situated who would come in and make themselves parties, and the stockholders could be served with process in the state.

"Whether a cause of action is stated in a pleading, is generally to be decided with reference to the law of the state where the action is pending. *If the state court hold that no cause of action is set forth in pleading and that it is against the public policy of the state to permit an action for such a purpose, we should generally hold that there was no federal question involved in such determination. The plaintiffs, however, urge that there is here an exception to that rule founded upon the considerations just stated, and that if under the Minnesota law this action could be maintained, the courts of Wisconsin are bound to entertain jurisdiction to the same extent. It is not, however, the case that every decision regarding the proper construction of the statute of another state, involves a federal question. Where the case turns upon the construction and not the validity of the statute, a decision of that question is not necessarily of a federal character.* Johnson vs. New York Life Insurance Company, 187 U. S. 491, 496."

Again at P. 345 the court says:

"Whether, aside from the federal considerations just discussed, the Wisconsin court should have permitted this action to be maintained, because of the principle of comity between the states, is a question exclusively for the courts of that state to decide. The right to maintain it under the facts of this case is not founded upon any provision of a federal nature, and we cannot supervise the action of the Wisconsin court in this particular."

In Allen vs. Alleghany Company, 196 U. S. 458 (466) the language last above quoted from Finney vs. Fry is quoted with approval by this court.

In various cases the Federal Courts have entertained jurisdiction of actions by receivers to enforce judgments for additional stockholders liability. In those cases the bringing of such an action would not have been against the public policy of the state in which the Federal Court was sitting. In many of them the court ex-

pressly mentions this fact as bearing upon its ability to entertain the action.

Kirtley v. Holmes, 46 C. C. A. 102, 107 Fed. 1 (6th Cir.).
Lewis v. Clark, 64 C. C. A. 138, 129 Fed. 570 (9th Cir.).
Rogers v. Riley, 80 Fed. 759.
Burr v. Smith, 113 Fed. 858.

9. *The validity of Chap. 272 laws of Minn., for 1899 and the amendments thereto are not drawn in question in this case; hence no federal question is raised.*

The validity of the Minnesota statute in question is not involved in this case. It is true that the Wisconsin court in construing this statute is of opinion that under it no personal judgment can be rendered by the Minnesota court against those stockholders not personally served with process, or who do not voluntarily appear in the action in which construction, as we have heretofore shown in this brief, the supreme court of Minnesota and this court concur. The supreme court of Wisconsin bases its refusal to permit this action to be maintained not upon the invalidity of the Minnesota statute but upon the grounds that allowing such action to be maintained would be a violation of the long established public policy of the state for the reasons specifically set forth in the Finney and Hunt cases and that it would be granting a remedy in favor of the creditors of a Minnesota corporation which it denied to its own citizens under like circumstances. This raises no federal question. Nowhere is there a suggestion that a judgment rendered by the Minnesota court against a stockholder served personally with process would be void.

Where a case turns upon the construction and not upon the valadity of statute of another state it does not necessarily involve a federal question.

Finney v. Guy, 189 U. S. 335 (340).
Johnson v. New York Life Ins. Co., 187 U. S. 491 (496).
Allen v. Alleghany Co., 196 U. S. (463).
Lloyd v. Matthews, 155 U. S. 222.
Banholzer v. New York Life Ins. Co., 178 U. S. 402.
Johnson v. New York Life Ins. Co., 187 U. S. 491.

10. *Upon demurrer to a complaint alleging the law of another state the defendant is not concluded by such allegations: the court will examine the statutes and decisions of such state and determine for itself whether the law is as pleaded.*

Finney v. Guy, 189 U. S. 335 (343–4).
Knickerbocker Trust Co. v. Iselin, 185 N. Y. 54 (58).

In the Finney case this court says:

> "This right and duty of the courts to themselves construe the statutes and decisions are not altered because the law of the foreign state and the various decisions of its courts are alleged to be as set in a pleading which is demurred to instead of being proved upon the trial.
>
> "In this case the statutes, together with the references to the decisions of the state courts are given in the complaint, and the pleader, by making an averment in the form of a fact, assumes to give a meaning to them such as he thinks to be correct, but the duty still remains with the courts to themselves determine from those statutes and decisions what is in truth the law of the foreign jurisdiction. The courts are not concluded by an averment of what is the law in a foreign jurisdiction, contained in a pleading which is demurred to, any more than they would be by the testimony of a witness to the same effect upon a trial; certainly not when the statute upon which the case rests is set forth and the decisions under it are also referred to as evidence of the law. The demurrer does not admit as a fact, that the construction (in the form of an averment of fact) which the pleader may choose to put upon those statutes or decisions is the right conclusion to be drawn from them."

The above citations apply to may of the allegations of the complaint in reference to the Minnesota law. Such allegations are not admitted by the demurrer to the complaint. The court will in each instance look beyond the allegations of the pleader in order to determine what the law of Minnesota is.

11. *There is nothing in any of the cases arising under the amended Minnesota statute and decided by this court since the amendment to the Minnesota law in conflict with the decision of the Wisconsin court in Hunt v. Whenell.*

As stated in plaintiff's brief, four cases previous to those at bar have reached this court arising under the Minnesota statute since enactment of chapter 272, Laws of 1899, viz.: First National Bank of Ottawa v. Converse, 200 U. S. 425; Bernheimer v. Converse, 206 U. S. 516; Converse v. First National Bank of Suffield, 212 U. S. 567, and Converse v. Stewart. In no one of them was any question raised as to whether the action was against the public policy of the state where brought or whether a remedy was provided by the Minnesota law different from that of the *lex fori*, and which remedy was denied the citizens of the state where such action was brought, or whether this

court would compel a state court to entertain such action against its solemn declaration that by so doing it would subject its citizens to great and manifold injustice and hardship.

The case of First National Bank of Ottawa, v. Converse was brought in a Federal court in a state where the public policy of that state would permit such action and a recovery was had in that court, but the judgment was reversed here on the ground that it was void for the reason that the act of the bank in becoming a stockholder in the insolvent Minnesota Threshing Manufacturing Company was *ultra vires* and void—certainly not a conclusive argument as to the conclusiveness of the order levying the assessment on the stock.

The case of Converse v. First National Bank of Suffield went by default in this court, there being no appearance for the defendant in error and no opinion being written in the case.

Converse v. Stewart was dismissed because no Federal question was involved.

Bernheimer v. Converse was an action brought in a Federal court in a state where it was not against the public policy thereof to permit such action, to recover upon the stockholders' double liability under the Minnesota statute. The court says (P. 525):

> "The principal contentions in these cases are that the act of 1899, above referred to, works such a change in the contract theretofore eisting by virtue of the acquisition of stock in a Minnesota corporation as to impair the obligation thereof and in ways to be hereafter noticed, undertakes to hold a stockholder by judgment rendered without due process of law."

What was said by the court must be considered only with reference to the questions before the court. There is no suggestion in the argument of counsel or in the opinion of the court that it was against the public policy of New York to permit such an action to be brought, and the fact that such question was not raised is conclusive proof that it was not against such policy.

In the case of Howorth v. Angle, 162 N. Y. 179, cited by the court in the opinion in the Bernheimer case as an authority to the point that plaintiff may maintain the action, the court says:

> "While a foreign receiver cannot sue in this state as a matter of right, still our courts uphold the title of a foreign assignee or receiver upon the principle of comity. If the title is by virtue of a voluntary conveyance or transfer, it is sustained against all, including even domestic creditors; *but if it depends on a foreign statute or judgment, it is sustained against all except*

> *domestic creditors.* Every remedy to gather in the assets is afforded, *unless it would interfere with the policy of the state, or impair the rights of its citizens.*"

This court, in the Bernheimer case, held that the legislature might change the remedy for the enforcement of this liability, but that that did not impair the obligation of contract nor deny plaintiff in error "due process of law." Any general statement therein as to the right of the receiver to maintain such action must be read in reference to the point under consideration and cannot prevail against the previous utterances of this court where the point at issue was raised and carefully considered by this court.

Nor does the fact that the supreme court of Massachusetts permitted this plaintiff to recover in the case of Converse v. Ayer militate against the doctrine for which we contend. The Massachusetts court has in many cases (some of which are cited in this brief) held that it will not permit a foreign receiver to prosecute actions against its citizens in cases where it is aganst the public policy of the state, or where, by so doing, injury would result to its citizens. It is only because it is not against such public policy that it permitted the action in the Ayer case.

In the case of Post & Co. v. Toledo, Cincinnati & St. Louis Railroad, 144 Mass. 341 (345), the court says:

> "This court does not take jurisdiction of a suit to enforce this liability of stockholders in a foreign corporation, not because it would be a suit to enforce a penalty, or a suit opposed to the policy of our laws, but because it is a suit against a foreign corporation which involves the relation between it and its stockholders and in which complete justice only can be done by the courts of the jurisdiction where the corporation was created."

In the case of Howarth v. Lombard, 175 Mass. 570, cited by this court in the opinion in the Bernheimer case as an outhority for sustaining the judgment in that case, the court clearly points out that the Massachusetts court would not have permitted the maintenance of an action by a receiver of a foreign corporation if such action was against its public policy. On page 573 the court says.

> "If the statute creating the right is against the policy of the neighboring state, that is a sufficient reason for refusing to enforce the right here. In the neighboring state, in such a case, it will not be considered a right. If the enforcement of a stat-

> utory right in a neighboring state in the manner proposed will work injustice to its citizens, considerations of comity do not require the recognition of it by the courts of that state."

Nor do we think that the case of Hancock National Bank v. Farnum, 176 U. S. 640, is an authority against the principle for which we contend. The constitution and statute of Kansas makes each stockholder in a Kansas corporation personally and separately liable to each creditor of the corporation. Upon the insolvency of the corporation and the return of execution unsatisfied, the creditor may either seize the property of any stockholder and apply it in satisfying his claim, or he may commence an action against such stockholder to recover from him the amount of his claim. The courts have held that there is a contract liability between each stockholder and each creditor. The Farnum action was brought by a creditor of the corporation directly against a stockholder thereof and not by a receiver of the corporation as in the case at bar. The decision of the Rhode Island court seems to have turned largely upon the construction it gave to the Kansas constitution and statutes, and that certain decisions of the Kansas court in stating the law relaing thereto were, in the opinion of the Rhode Island court, *obitur dictum*, and upon the fact that the statutes of Kansas and Rhode Island are not alike. It is true that the court said:

> "The statutes of a state do not operate beyond its own limits, and comity between states does not require that our state should enforce the statutory provisions of another state which are contrary to the policy of its own laws."

But this statement is made at the very end of the opinion and is the only reference to "public policy" in the opinion. The court nowhere points out how the maintenance of such action would offend the policy of the state or result in injury to her inhabitants as is specifically pointed out by the Wisconsin court in the Finney and Hunt cases.

Counsel have nowhere cited a case where this, or any other court, has held that a receiver of a foreign corporation may maintain an action in another state to collect upon the double liability of a stockholder where the maintenance of such action is against the public policy of such state, or where it would, in the opinion of the court, seriously inconvenience and injure its citizens, or where, as in the case at bar, such court must give the receiver of a foreign corporation a remedy which it has always denied to a receiver appointed by its own courts in an action to wind up the affairs of the corporation, nor have they cited a case where this court has held that the failure of a state court to permit such action to be brought is a violation of the

"full faith and credit" clause of the Federal constitution, nor do we believe such case exists. The cases we have cited—several of which are from the Minnesota court and all from courts of the highest standing—uniformly hold that such receiver cannot maintain such action as a strict right, but only when the public policy of the sister state will permit.

In order to maintain this action not only has the receiver brought a form of action not given to a receiver of a Wisconsin corporation, but under the authority given him by the Minnesota statute he has attached the property of the defendant, claiming to have obtained jurisdiction of the property of the defendant in that way—a remedy which is denied a receiver of a Wisconsin corporation against a resident of Wisconsin in an action to wind up the affairs of an insolvent Wisconsin corporation.

It is unnecessary here to restate the particulars in which the maintenance of this action would offend the public policy of the state of Wisconsin, or injure its citizens. That is done by the Wisconsin court in the very able opinions of Justice Marshall in the Finney and Hunt cases.

The Wisconsin supreme court, which has always maintained a most enviable reputation for ability, integrity and judicial fairness, has, in the Finney, Benson and Hunt cases, most carefully considered every argument and authority that was, or can be, presented in favor of plaintiff in error's contention and has decided upon most exhaustive examination of the principles involved that such contention ought not prevail.

It is respectfully submitted that the judgment of the Wisconsin supreme court was right and should be affirmed.

JOHN B. SANBORN,
CHAUNCEY E. BLAKE,

CHARLES E. BUELL,
Counsel for Defendant in Error.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1911

No. [redacted] 48.

THEODORE R. CONVERSE, RECEIVER OF THE MINNESOTA THRESHER MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

JENEVA S. McCAULEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

FILED APRIL 20, 1912.

(21,643.)

(21,643.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 212.

THEODORE R. CONVERSE, RECEIVER OF THE MINNESOTA THRESHER MANUFACTURING COMPANY, PLAINTIFF IN ERROR,

vs.

JENEVA S. McCAULEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

INDEX.

	Original.	Print
Writ of error	1	1
Return on writ of error	3	2
Petition for writ of error	5	2
Allowance of writ of error	6	2
Citation and service	8	3
Bond on writ of error	10	3
Assignment of errors	13	5
Prayer for reversal	18	7
Caption to transcript	20	8
Transcript from circuit court of Dane county	21	8
Notice of appeal	21	8
Appeal bond	22	9
Summons	24	10
Sheriff's return	25	10

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 30, 1910.

	Original.	Print
Complaint	26	11
Exhibit A—Order in case of Merchants National Bank of St. Paul *vs.* Minnesota Thresher Mfg. Co., December 22, 1902	47	24
B—Order in case of Merchants National Bank of St. Paul *vs.* Minnesota Thresher Mfg. Co., June 11, 1907	51	26
Demurrer to complaint	55	28
Opinion on demurrer	56	29
Order sustaining demurrer	58	30
Exception to order sustaining demurrer	59	31
Judgment	60	31
Notice of entry of judgment	62	32
Clerk's certificate	64	32
Argument and submission	65	33
Judgment	66	33
Opinion	68	34
Dissenting opinion of Timlin, J	70	34
Clerk's certificate	73	36

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Judicial Court of the Commonwealth of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Judicial Court of the Commonwealth of Wisconsin before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Theodore R. Converse, Receiver of the Minnesota Thresher Manufacturing Company and Jeneva S. McCauley wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against the validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution of or a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute or commission, a manifest error *had* happened to the great damage of the said Theodore R. Converse, Receiver of the Minnesota Mfg. Co. as by his complaint appears, we being willing that error if any *had* been should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that then under
2 your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States together with this writ so that you have the same at Washington on the 24th day of April next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court the 26th day of March in the year of our Lord, 1909.

[Seal U. S. Circuit Court, Western Dist. of Wisconsin, Madison.]

F. W. OAKLEY,
Clerk of the United States Circuit Court,
Western District of Wisconsin,
By F. D. REED, *Deputy.*

3 STATE OF WISCONSIN,
Supreme Court, ss:

The return to the within writ appears by the schedule hereto annexed.

The return of the Justices of the Supreme Court of the State of Wisconsin.

CLARENCE KELLOGG, *Clerk.*

4 [Endorsed:] State of Wis. In Supreme Court. Theo. R. Converse, Receiver of Minn. Thresher Mfg. Co., plaintiff, v. Jeneva S. McCauley, defendant. Writ of Error. Filed Mar. 26, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis.

5 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Mfg. Co., Plaintiff & Appellant,

vs.

JENEVA S. MCCAULEY, Defendant & Respondent.

The Appellant in the above entitled cause feeling *itself* aggrieved by the Judgment of the said Court entered on the 10th day of November, 1908, comes now by Jones & Schubring and Davis, Kellogg & Severance, his attorneys, and petitions said Court for an order allowing said appellant to prosecute a writ of error to the Honorable the Supreme Court of the United States under and according to the Laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the appellant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in said action be suspended and stayed until the determination of said writ of error by the United — Supreme Court, and that said judgment be reversed.

And your petitioner will forever pray.

JONES & SCHUBRING AND
DAVIS, KELLOGG & SEVERANCE,
Att'ys for Appellant.

To the Honorable John B. Winslow, Chief Justice of the Supreme Court of Wisconsin.

6 The writ of error above prayed for is hereby allowed.

Let the plaintiff in error give an undertaking in the sum of one thousand — and upon the filing of such undertaking let proceedings be stayed in this Court.

Dated Jan. 13, 1909.

JNO. B. WINSLOW,
Chief Justice, Wisconsin.

7 [Endorsed:] State of Wisconsin. In Supreme Court. Theodore R. Converse, Receiver of Minnesota Thresher Mfg. Co., Plaintiff, vs. Jeneva S. McCauley, Defendant. Petition for Writ of Error. Filed Jan. 13, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis.

8 UNITED STATES OF AMERICA, *ss:*

To Jeneva S. McAuley, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Wisconsin, wherein Theodore R. Converse, Receiver of Minnesota Thresher Mfg. Co is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment and decree rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the chief justice of the Supreme Court of the State of Wisconsin, this 26th day of March, 1909.

R. D. MARSHALL,
Acting Chief Justice of the Supreme Court of the State of Wisconsin, the Chief Justice Being Absent.

9 [Endorsed:] State of Wisconsin, Supreme Court. Theodore R. Converse, Receiver of the Minn. Thresher Mfg. Co., Plaintiff, vs. Jeneva S. McAuley, Defendant. Citation. Service of a copy of the within citation admitted this 27th day of March, 1909. Buell & Lucas, Att'ys for Jeneva S. McCauley. Filed Mar. 26, 1909. Clarence Kellogg, Clerk Supreme Court, Wis. Jones & Schubring, Badger Block, Madison, Wisconsin, Attorneys.

10 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff and Appellant,
vs.
JENEVA S. MCCAULEY, Defendant and Respondent.

Know all men by these presents, that we, Theodore R. Converse, Receiver of the Minnesota Thresher Mfg. Co. as principal, and National Surety Company of New York, as surety, are held and firmly bound unto Jeneva S. McCauley, defendant above named, in the sum of $1000 *dollars*, to be paid to the said Jeneva S. McCauley, her executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and

our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated the 22nd day of March, 1909.

Whereas, the above named plaintiff, Theodore R. Converse, Receiver of the Minnesota Thresher Manufacturing Company, has sued out a writ of error to the United States Supreme Court to reverse the judgment in the above entitled cause by the Supreme Court of the State of Wisconsin.

Now, therefore, the condition of this obligation is such that if the above named Theodore R. Converse, Receiver of the Minnesota Thresher Manufacturing Company shall prosecute said writ to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THEODORE R. CONVERSE. [SEAL.]
As Receiver of Minnesota Thresher Manufacturing Co.

[SEAL.] NATIONAL SURETY COMPANY.
By C. M. BEND, *Its Attorney in Fact.*

C. W. G. WITHEE,
FRED DESCH,
As to T. R. C.
H. W. ENDGERTON,
D. I. YORK,
As to Surety.

11 STATE OF MINNESOTA,
County of Ramsey, ss:

On this 22nd day of March, A. D. 1909, before me appeared C. M. Bend, to me personally known, who being by me duly sworn, did say that he is the attorney in fact of the National Surety Company, the corporation described in and who executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said C. M. Bend acknowledged said instrument to be the free act and deed of said corporation.

DANIEL I. YORK,
Notary Public, Ramsey County, Minnesota.

My Commission Expires August 25th, 1915.

12 STATE OF WISCONSIN,
Department of Insurance:

The National Surety Company, located at New York, in the state of New York, having furnished to the undersigned Commissioner of Insurance due proof of its possessing the qualifications required by the laws of the state of Wisconsin relating to Surety Corporations, and having complied with said laws,

Now, therefore, This is to Certify that said company has qualified and is authorized to transact within this state the business of a suretyship corporation under the Statutes of this State until the first day of March, A. D. 1910, unless this certificate be sooner revoked.

Witness my hand and official seal at Madison, Wisconsin, this first day of March, A. D. 1909.

[SEAL.]

GEO. E. BEEDLE,
Commissioner of Insurance.

I, George E. Beedle, Commissioner of Insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 34 issued to the National Surety Company and on file in this department, and that the same is a true copy of said original and of the whole thereof.

Witness my hand and official seal at Madison, Wisconsin, this twentieth day of March, A. D. 1909.

[SEAL.]

GEO. E. BEEDLE,
Commissioner of Insurance.

[Endorsed:] (Copy.) State of Wisconsin. In Supreme Court. Theodore R. Converse, Receiver, etc., vs. Jeneva S. McCauley. I hereby approve of the within bond as to form and amount. R. D. Marshall, Justice of the Supreme Court, acting Chief Justice, the latter being absent. Bond on Writ of Error. Filed March 26, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis.

13 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff & Appellant,

vs.

JENEVA S. MCCAULEY, Defendant & Respondent.

Now comes the plaintiff Theodore R. Converse, Receiver of the Minnesota Thresher Manufacturing Company, in the above entitled action, and in connection with his petition for a writ of error makes the following assignment of errors, and avers that in the record and proceedings in said action, and in the judgment therein, there is manifest error to the great damage of the plaintiff in this, to-wit:

First. That the Supreme Court of the State of Wisconsin erred in determining that the plaintiff's complaint therein stated no cause of action and in refusing to reverse the judgment rendered in the defendant's favor in the Circuit Court of Dane County, Wisconsin, determining that said complaint stated no facts sufficient to constitute a cause of action.

Second. That the Supreme Court of the State of Wisconsin erred in determining that the opinion in the case of Hunt v. Whewell, 122 Wis. 33, in any way ruled this case, and in finding that as to said Supreme Court of the State of Wisconsin said decision was stare

decisis as to all questions involved until a higher tribunal should reach a different conclusion.

14 Third. That the Supreme Court of the State of Wisconsin erred in determining that the question of comity was not involved or in any way passed upon in the case of Bernheimer v. Converse, 206 U. S. 516, and that the said Bernheimer case was not in conflict with said decision in Hunt v. Whewell, 122 Wis. 33.

Fourth. That the Supreme Court of the State of Wisconsin erred in failing to find that Chapter 272 of the General Laws of 1899, of Minnesota and sections 3184-3190 of the Revised Laws of 1905, of Minnesota both declare that assessments levied pursuant to their provisions are conclusive upon stockholders wherever they may be.

Fifth. That the Supreme Court of the State of Wisconsin erred in failing to find that the representation which the defendant stockholder had by virtue of his membership in the said corporation was all that he was entitled to.

Sixth. That the Supreme Court of the State of Wisconsin erred in failing to find that the property of the defendant was not taken without due process of law under said proceedings under Chapter 272 of the General Laws of Minnesota for 1899, and Sections 3184 to 3190 inclusive Revised Laws of 1895 of Minnesota.

Seventh. That the Supreme Court of the State of Wisconsin erred in finding in effect that it is the settled judicial policy of the State of Wisconsin that a Minnesota receiver may not use the courts of this state to enforce such a liability as that upon which plaintiff's cause of action is grounded and that the adoption of this policy is a question exclusively for the courts of this state to decide.

Eighth. That the Supreme Court of the State of Wisconsin erred in failing to find that an absolute right existed in the plaintiff to recover upon an assessment which was made by said interlocutory decree duly rendered by the Courts of the State of Minnesota in an action in which the defendant was represented by the cor-

15 poration, and an action in which the Minnesota court had jurisdiction of the defendant to the extent necessary to make such interlocutory decree.

Ninth. The said Supreme Court erred in failing to find that it is not open to the Courts of this State to decide whether under the doctrine of comity between states it will permit such an action as the one at bar to be pursued.

Tenth. The Supreme Court of the State of Wisconsin erred in failing to find that the liability of stockholders though statutory in origin is contractual in its nature, and that under the statute the cause of action is transitory and can be maintained in any tribunal having jurisdiction, where process could be served on the individual stockholder.

Eleventh. The Supreme Court of the State of Wisconsin erred in failing to find that Section 1, Article 4 of the Constitution of the United States should control the rulings of the State Court of Wisconsin in which the foreign receiver brings his action to enforce a judgment in favor of such receiver and against such defendant, and that

this Court should give the orders and decrees of the Court of Minnesota the same force said orders and decrees would have in that state.

Twelfth. That the Supreme Court of the State of Wisconsin erred in failing to find that the said orders and decrees above mentioned by the Courts in the State of Minnesota were final and conclusive on the questions involved in said suit.

Thirteenth. That the Supreme Court of the State of Wisconsin erred in failing to find that said Receiver had the same right to sue in the courts of Wisconsin as any citizen of another State having title as Trustee.

16 Fourteenth. That the Supreme Court of the State of Wisconsin erred in denying the said orders and judgments of said Minnesota Court the efficacy to which they were entitled in the State of Minnesota, and therefore failed to give full faith and credit to said judicial proceedings within the meaning of the Constitution of the United States.

And said plaintiff prays that said judgment may be reversed and held for naught.

THEODORE CONVERSE,
Receiver of Minnesota Thresher Manufacturing Co.,
By JONES & SCHUBRING AND
DAVIS, KELLOGG & SEVERANCE,
Attorneys for Appellant.

17 [Endorsed:] State of Wisconsin. In Supreme Court. Theodore R. Converse, Receiver of the Minn. Thresher Mfg. Co., Plaintiff, vs. Jeneva S. McCauley, Defendant. Assignment of Errors. Filed Jan. 13, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis.

18 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Mfg. Co., Plaintiff & Appellant,
vs.
JENEVA S. MCCAULEY, Defendant & Respondent.

The plaintiff above named having applied for a writ of error to review in the Supreme Court of the United States the judgment in the said Supreme Court of the State of Wisconsin rendered against it in this cause, and having filed an assignment of error, hereby prays that said judgment be reversed, annulled and held for naught, and that it may be restored to all things which it has lost by occasion of said judgment.

THEODORE CONVERSE,
Receiver of Minnesota Thresher Manufacturing Co.,
By JONES & SCHUBRING AND
DAVIS, KELLOGG & SEVERANCE,
Attorneys.

19 [Endorsed:] State of Wisconsin. Supreme Court. Theodore R. Converse, Receiver Minn. Thresher Mfg. Co., Plaintiff, vs. Jeneva S. McCauley, Defendant. Prayer for Reversal. Filed Jan. 13, 1909. Clarence Kellogg, Clerk of Supreme Court, Wis.

20 Pleas before the Supreme Court of the State of Wisconsin, at a term thereof begun and held at the Capitol, in Madison, the seat of government of said State, on the second Tuesday, to-wit: the eleventh day of August, A. D. 1908.

Present:

John B. Winslow, Chief Justice.
Roujet D. Marshall, Joshua Eric Dodge, Robert G. Siebecker, James C. Kerwin, William H. Timlin, John Barnes, Justices.
Clarence Kellogg, Clerk.

Be It Remembered that heretofore, to-wit: on the eleventh day of July, in the year of our Lord one thousand nine hundred and eight, came into the office of the Clerk of the Supreme Court of the State of Wisconsin, Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Company, and filed in said court his certain notice of appeal and undertaking on appeal, according to the statute in such case made and provided, and also the return to such appeal of the clerk of the circuit court of Dane county, in said state, in the words and figures following, that is to say:

21 STATE OF WISCONSIN:

In Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Mfg. Co., Plaintiff,

vs.

JENEVA S. MCCAULEY, Defendant.

To Messrs. Buell & Lucas, attorneys for defendant, and to Lawrence Larson, clerk of the aforesaid court:

Please take notice that the plaintiff above named hereby appeals to the Supreme Court of the State of Wisconsin from the judgment rendered by the above named court herein entered on the 10th day of July, 1908, in favor of the defendant and against the plaintiff dismissing the complaint of the plaintiff herein, and for the sum of $37.67 costs, and from the whole thereof.

JONES & SCHUBRING AND
C. A. SEVERANCE,
Attorneys for Plaintiff.

Dated July 11, 1908.

(*Endorsements:*)

Circuit Court, Dane County, Wis. Filed Jul- 11, 1908, Lawrence O. Larson, Clerk.

Filed Jul- 11, 1908, Clarence Kellogg, Clerk of Supreme Court, Wis.

22 STATE OF WISCONSIN,
Department of Insurance:

The National Surety Company, located at New York in the State of New York having furnished to the undersigned Commissioner of Insurance due proof of its possessing the qualifications required by the laws of the State of Wisconsin relating to suretyship corporations, and having complied with said laws,

Now, Therefore, This is to Certify that said company, has qualified and is authorized to transact within this state the business of a suretyship corporation under the Statutes of this State until the first day of March, A. D. 1909, unless this certificate be sooner revoked.

Witness my hand and official seal at Madison, Wisconsin, this 28 day of February, A. D. 1908.

[SEAL.] GEO. E. BEEDLE,
Commissioner of Insurance.

I, Geo. E. Beedle, Commissioner of Insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 25 issued to the National Surety Company, and on file in this department, and that the same is a true copy of said original and of the whole thereof.

Witness my hand and official seal at Madison, Wisconsin, this 11 day of July, A. D. 1908.

[SEAL.] GEO. E. BEEDLE,
Commissioner of Insurance.

(*Endorsement:*)

Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

23 STATE OF WISCONSIN:

In the Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Mfg. Co., Plaintiff,
vs.
JENEVA S. MCCAULEY, Defendant.

Whereas on the 10th day of July, 1908, in the Circuit Court within and for the County of Dane, the above named defendant recovered judgment against the above named plaintiff dismissing the complaint of the plaintiff herein, and for the sum of $37.67, costs, and the above named plaintiff Theodore R. Converse, as Receiver of the Minnesota Thresher Mfg. Co., feeling aggrieved thereby intends to appeal therefrom to the Supreme Court of the State of Wisconsin,

Now therefore the National Surety Company, a corporation does hereby undertake that the said appellant will pay all costs and

damages which may be awarded against it on said appeal, not exceeding $250.

Dated this 11th day of July, 1908.

NATIONAL SURETY COMPANY.
By W. J. McKAY, *Agent.*
RUFUS B. SMITH,
[SEAL.] *Consulting Attorney.*

24 STATE OF WISCONSIN:

In Dane County Circuit Court.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Co., Plaintiff,
vs.
JENEVA S. McCAULEY, Defendant.

The State of Wisconsin to the said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend *ant* the above entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

JONES & SCHUBRING,
Plaintiff's Attorneys, Madison, Wis.
C. A. SEVERANCE AND
C. W. G. WITHEE,
Of Counsel.

(Endorsements:) State of Wisconsin. Circuit Court Dane County. Theodore R. Converse, plaintiff, vs. Jeneva S. McCauley, de-
25 fendant. Summons. Jones & Schubring, Badger Block. Madison, Wisconsin, Plaintiff's Attorneys. C. A. Severance and C. W. G. Withee of Counsel. Circuit Court, Dane County. Filed Aug. 16, 1907. Lawrence O. Larson, Clerk. Filed July 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

STATE OF WISCONSIN,
Dane County, ss:

I hereby certify that after due diligent search on this 15th day of August, A. D. 1907, I am unable to find the within named defendant Jeneva S. McCauley in Dane County, Wisconsin, in said State and that said defendant has no legal abode in said state of Wisconsin at which to leave a copy of the within summons and I am informed and verily believe that said defendant is not now a resident of said State and for that reason I am unable to serve the within summons on the said defendant and thereupon I served the within Summons upon said defendant's agent, Charles E. Buell, at the City of Madison, Dane County, Wisconsin on the 15th day of

August, A. D. 1907 by delivering to and leaving with the said agent, Charles E. Buell, a true copy of the said summons and I endorsed upon said copy the date of service by whom served and the title of my office.

I. E. KITTLESON,
Sheriff of Dane County, Wisconsin.
By G. M. KANOUSE,
Deputy Sheriff.

Fees:

Service	$1.00
Copy	.20
2 Miles travel	.20
	$1.40

26 STATE OF WISCONSIN:

In Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff.

vs.

JENEVA S. MCCAULEY, Defendant.

And now comes the plaintiff and for a first cause of action against said defendant alleges:

That on or about the 26th day of November, A. D. 1884, the Minnesota Thresher Manufacturing Company was duly incorporated in the State of Minnesota, under and pursuant to the provisions of the constitution and laws of said state; that ever since said date said corporation has continued to be and now is a body corporate, organized, created and existing under and by virtue of the constitution and laws of said state; and that said corporation is, and at all times has been a citizen and resident of the state of Minnesota; that Theodore R. Converse, the above named plaintiff, is and since a long period prior to his appointment as receiver of the Minnesota Thresher Manufacturing Company has been a resident and citizen of the State of Minnesota and the defendant is and for more than one year last past has been a resident and citizen of the State of Wisconsin.

That the articles of incorporation of said Minnesota Thresher Manufacturing Company (hereinafter called the Thresher Company) provided that the objects for which said corporation
27 was formed were the purchase of the capital stock, evidences of indebtedness issued by and the assets of the Northwestern Manufacturing and Car Company, a corporation existing under the laws of the State of Minnesota, or any portion of said capital stock, evidences of indebtedness or assets, and the manufacture and sale of steam engines, and all kinds of farm implements, machinery of all kinds, and the manufacture and sale of all articles, implements and machinery, of which wood and iron, or either of them, form the principal component parts, and the manufacture of

materials therein, used with a principal place of business at the city of St. Paul, in the county of Ramsay, in said State of Minnesota, which afterwards by amendment to said articles of incorporation, duly made, was changed to the City of Stillwater, in the county of Washington, in said State of Minnesota; that after the incorporation as aforesaid said Thresher Company engaged in and carried on at said St. Paul and at said Stillwater all the classes of business authorized by said articles of incorporation; that said articles of incorporation have never been in any way altered, amended or modified, except as aforesaid.

That the capital stock of said Thresher Company as provided and authorized by said Articles of Incorporation was the sum of seven million dollars ($7,000,000) divided into one hundred and forty thousand (140,000) shares of the par value of fifty dollars ($50) each; that the said stock was divided into two classes, denominated preferred and common stock, the amount of said preferred stock so authorized was the sum of four million dollars ($4,000,000), or eighty thousand (80,000) shares of the par value of fifty dollars ($50.00) each, and the amount of said common stock so authorized was the sum of three million dollars ($3,000,000), or sixty thousand shares of fifty dollars ($50) each, of which said preferred stock there have been issued and are now outstanding twenty-seven thousand nine hundred and sixty-seven (27,967) shares, and that of
28 the common stock of *of* said corporation there have been issued and are now outstanding forty-two thousand five hundred and ninety-four (42,594) shares.

That the Merchants National Bank of St. Paul, Minnesota, is and during all the times hereinafter stated has been, a banking corporation organized and existing under the laws of the United States of America, having its place of business at the City of St. Paul, in the State of Minnesota; that on the 6th day of May, A. D. 1901, the said Thresher Company was indebted to said Merchants National Bank of St. Paul, Minnesota, in the sum of two thousand nine hundred and thirty-six dollars and seven cents ($2,936.07); that prior thereto an action had been duly commenced in the District Court for Ramsay County, Minnesota, in which the said bank was the plaintiff and said Thresher Company was the defendant, of which said cause said Court, which was a court of general jurisdiction and of record, had acquired jurisdiction of both of the parties and of the subject-matter thereof, and on the 6th day of May, 1901, judgment was duly entered and docketed in said Court in favor of said Merchants National Bank of St. Paul, Minnesota, said plaintiff, and against said Thresher Company, for two thousand nine hundred and thirty-six dollars and seven cents ($2,936.07) which said judgment has never, either in whole or in part, been paid or satisfied. That thereafter an execution directed to the Sheriff of said Ramsay County, was duly issued and delivered to said Sheriff, who made return thereon that, after diligent search and inquiry, he was unable to find any property of said Thresher Company in his said county, and hence returned said execution wholly unsatisfied; that a certain other execution was duly issued out of said Court upon said judg-

ment directed to the Sheriff of said Washington County, and that said Sheriff duly returned that, after diligent search and inquiry, he was unable to find any property of said defendant in his
29 said county, and hence returned said execution wholly unsatisfied.

That at the time said judgment was entered and said execution was issued and returned as aforesaid, and for a long time prior thereto, and at all times thereafter, said Thresher Company was, and now is, wholly insolvent and without any assets or property whatsoever, other than the liability of its stockholders as hereinafter set forth.

That after the return of said executions as aforesaid, and on or about the 15th day of August, 1901, said Merchants National Bank, as a judgment creditor of said Thresher Company, duly instituted and commenced in the District Court for the said County of Washington and state of Minnesota, which said Court was then and there a Court of record and of general jurisdiction, an action against said Thresher Company under and pursuant to the provisions of Chapter 76 of the General Statutes of the State of Minnesota, and the acts amendatory thereof and supplementary thereto, for the sequestration of the stock, property, things in action and the effects of the said Thresher Company, and for the appointment of a Receiver for the same; that said Thresher Company was duly and personally served with summons and process in said action, and on or about the 16th day of August, 1901, duly appeared in said action by its duly authorized attorney.

That on the said 16th day of August, 1901, judgment was duly given, rendered and entered in and by said Court in said action, adjudging that the stock, property, things in action and effects of said Thresher Company be sequestered, and that a Receiver therefor be appointed; that such judgment has never been appealed from nor in any manner modified, reversed or set aside.

That on the 16th day of August, 1901, such proceedings were duly had that this plaintiff, Theodore R. Converse, was by said District Court for Washington County, Minnesota, in said cause, duly appointed Receiver of all the property, assets, rights and interests of said Thresher Company of every sort or nature, either in law or in equity, and with full authority and direction to sue for, collect, recover, compromise or settle any and all stockholders'
30 liability that may exist under the constitution and laws of the State of Minnesota, or otherwise, and to prosecute and sue for the amount of such liability, or any assessment that might be made by said Court on account thereof for the satisfaction of the claims of the creditors of said Thresher Company, and all expenses of administration of said trust, including fees, allowances, expenses of said Receiver and his counsel, and with full power and authority to sue for and enforce the collection of any assessment or stockholders' liability, either in the courts of the State of Minnesota or the courts of any other State or Territory, or the courts of the United States sitting in any State or Territory of the United States, and with full power and authority to prosecute appeals or sue out writs of error in any such suits or cases that may be so instituted by said

Receiver for the collection of such assessments or stockholders' liability, and in general to do and perform all acts that in the opinion of said Receiver, or that he might be advised, were needful or proper for the enforcement and collection of such assessments and stockholders' liability in any of the courts of the United States, or the various States and Territories of the United States; and said Receiver was further directed to seize and take into his possession, sue for and recover any and all property of every sort and nature possessed by said corporation.

That the plaintiff duly gave the bond required of him as such Receiver, by said order, which bond was duly approved by one of the Judges of said Court and duly filed in said action; and that the plaintiff duly qualified as such Receiver and entered upon the performance of his duties as such Receiver, and ever since has acted, and now is acting, as such.

That thereafter, according to and in pursuance of the laws of the State of Minnesota, such proceedings were had in said last-mentioned action, that an order of said District Court of said Washington County was made and entered therein on the 3rd day of September, 1901, authorizing and requiring the creditors of said Thresher Company to become parties to said action, and to
31 appear and exhibit therein their claims against said Thresher Company. That immediately after the entry of said order, the said order was duly published as required therein, and certain creditors of said Thresher Company duly became parties to said action as intervenors therein, and duly exhibited therein their claims and demands against said Thresher Company, and proved the same, and after hearing duly had in said action, said claims of such creditors were duly allowed to the amount of four hundred and forty-three thousand seven hundred and fifty-two dollars and seventeen cents ($443,752.17).

That at the time of the organization and incorporation of said Thresher Company, and at all times hereafter, during its corporate existence, and at the time when, and at all times since, the said defendant Jeneva S. McCauley became a stockholder in said Thresher Company, as hereinafter alleged, it was provided in and by the constitution and general laws of the State of Minnesota, pursuant to which said corporation was organized and incorporated, that each and every stockholder of said corporation severally agreed to assume and did assume liability for the indebtedness of said corporation in case of deficiency or insufficiency of corporate assets to liquidate such indebtedness, to the amount of the par value of his stock; and further agreed, in case of such deficiency, to pay and contribute for the equal benefit of the creditors of such corporation such amount, not exceeding the par value of the stock held by such stockholder, as might be required to make up such deficiency. That under said constitution and general laws, and the decisions of the Supreme Court of the State of Minnesota and the Supreme Court of the United States construing and interpreting the same, said agreement and undertaking on the part of the stockholders is contractual and transitory, and runs to and is enforceable for the corporate creditors by the

Receiver of the corporation, and that the same is enforceable by such Receiver in any jurisdiction whereof jurisdiction of stockholders may be obtained; and that said contract and agreement, on
32 the part of the stockholders, grows out of and follows the subscription to or acquisition of the corporate stock, wherein and whereby each stockholder guarantees the payment of all corporation indebtedness contracted, created or existing while such stock is held by him, and to the amount of his stock as aforesaid. And the said defendant, when she accepted the stock of said corporation now owned and held by her as hereinafter set forth, accepted the said provisions of the constitution and laws of Minnesota in relation thereto, and agreed to assume and pay the indebtedness of said corporation to the extent of the par value of the stock owned or held by him therein, or so much thereof as might be necessary for the payment of such indebtedness. And under the constitution and laws of Minnesota, the liability of said defendant upon her agreement aforesaid was and is an asset of said corporation.

That on the 16th day of August, 1901, and for a long time prior thereto, and while the provisions of the constitution and laws of the State of Minnesota as aforesaid remained in full force and effect, the above named defendant was the lawful owner and holder, and had duly and lawfully acquired, subject to the liability and agreement aforesaid 111 shares of the capital stock of said Thresher Company of the aggregate par value of Five thousand five hundred fifty ($5,550.00) dollars, and that the said shares of stock were duly and lawfully issued to, and received and accepted by, said defendant; that said defendant has never parted with or transferred any portion of said stock, but has at all times since the issue thereof to her as aforesaid, continued to be and now is the owner and holder of the same, and of all thereof, and so appears by the books and records of said Thresher Company.

That at the time said defendant so became the owner and holder of said shares of the capital stock of said Thresher Company, the provisions of the constitution and laws of the State of Minnesota hereinbefore set forth, were in full force and effect, and became a part of defendant's contract of purchase and ownership of said shares of stock; and said defendant in and by the purchase and ownership and holding of said shares of said stock of said
33 Thresher Company as aforesaid, duly contracted, became obligated and agreed for a valuable consideration that she would be and remain responsible with the other stockholders of said company for all contracts, debts and engagements of said company while she remained such stockholder, to the amount of her stock therein, at the par value thereof, to-wit, to the amount of five thousand five hundred fifty dollars ($5,550.00).

That it is provided by the laws of the State of Minnesota as follows:

General Laws of Minnesota for 1899.

Chapter 272.

An Act to Provide for the Better Enforcement of the Liability of Stockholders of Corporations.

SECTION 1. Wherever any corporation created or existing by or under the laws of the State of Minnesota, whose stockholders or any of them, are liable to it or to its creditors, or for the benefit of its creditors, upon or on account of any liability for or upon or growing out of, or in respect to the stock or shares at any time held or owned by such stockholders, respectively, whether under or by virtue of the constitution and laws of said State of Minnesota, or any Statute of said State, or otherwise, as heretofore made or shall hereafter make an assignment for the benefit of its creditors under the insolvency laws of this State; or whenever a Receiver for any such corporation has heretofore been or shall hereafter be appointed by any District Court of this State, whether under or pursuant to any of the provisions of Chapter seventy-six (76) of the General Statutes of eighteen hundred and ninety-four (1894) of Minnesota, and the acts amendatory thereof, or under or pursuant to any other statute of this State, or under the general equity powers or practice of such Court; the District Court appointing such Receiver, or having jurisdiction of the matter of said assignment, may proceed as in this act provided.

34 SECT. 2. Upon the petition of the assignee or Receiver of any such corporation, or of any creditor of such corporation who has filed his claim in such assignment or receivership proceedings, the said District Court shall, by order, appoint a time for hearing not less than thirty (30) days nor more than sixty (60) days from the time of filing said petition with the Clerk of said Court and shall direct such notice of such hearing to be given by the party presenting said petition, by publication or otherwise, as the Court in its discretion may deem proper; but if said petition be filed by a creditor other than the assignee or receiver of said corporation, the Court shall direct that notice of such hearing be personally served on such assignee or receiver.

SECT. 3. At such hearing the Court shall consider such proofs, by affidavit or otherwise, as may then be offered by the assignee or Receiver, or by any creditor or officer or stockholder of said corporation who may appear in person or by attorney, as to the probable indebtedness of said corporation, and the expenses of said assignment or receivership and the probable amount of assets available for the payment of such indebtedness and expenses, and also as to what parties are or may be liable as stockholders of said corporation, and the nature and extent of such liability. And if it appear to the satisfaction of the Court that the ordinary assets of said corporation, or such amount as may be realized therefrom within a reasonable time, will probably be insufficient to pay and discharge in full and without delay its indebtedness, and the expenses of such assignment or receivership, and that it is necessary or proper that

resort be had to such liability of its stockholders, the said
34½ Court shall thereupon, by order, direct and levy a ratable assessment upon all parties liable as stockholders, or upon or on account of any stock or shares of said corporation for such amount, proportion or percentage of the liability upon or on account of each share of said stock as the Court in its discretion may deem proper (taking into account the probable solvency or insolvency of stockholders, and the probable expenses of collecting the assessment), and shall direct the payment of the amount so assessed against each share of said stock to the assignee or receiver within such time thereafter as said Court may specify in said order.

SECT. 4. Said order shall direct the assignee or receiver to proceed to collect the amount so assessed against each share of said stock from the parties liable therefor; and shall direct and authorize said assignee or receiver, in case of the failure of any party liable upon or on account of any share or shares of said stock to so pay the amount so assessed against the same within the time specified in said order, to prosecute actions against each and every such party failing to pay the same, wherever such party may be found, whether in this State or elsewhere.

SECT. 5. Said order and the assessment thereby levied shall be conclusive upon and against all parties liable upon, or on account of, any stock or shares of said corporation, whether appearing or represented at said hearing, or having notice thereof, or not, as to all matters relating to the amount of, and the propriety of and necessity for the said assessment. This provision shall also apply to any subsequent assessment levied by said Court, as hereinafter provided.

35 SECT. 6. It shall be the duty of such assignee or receiver to, and he may, immediately after the expiration of the time specified in said order for the payment of the amount so assessed by the parties liable therefor, institute and maintain an action or actions against any and every party liable upon, or on account of, any share or shares of such stock who has failed to pay the amount so assessed against the same for the amount for which such party is so liable. Said actions may be maintained against each stockholder, severally, in this State or any other State or country where such stockholder, or any property subject to attachment, garnishment or other process in an action against such stockholder may be found. But if said assignee or receiver shall in good faith believe any stockholder so liable to be insolvent, or that the expense of prosecuting such action against such stockholder will be so great that it will be of disadvantage to the estate and the interest of creditors to prosecute the same, said assignee or receiver shall so report to said Court; and shall not be required to institute or prosecute any such action unless specifically directed so to do by said Court. And in such case said Court shall not require said Receiver to institute or maintain such action unless said Court shall have reasonable cause to believe that the result of such action will be of advantage to the estate and creditors of said corporation; except as hereinafter provided.

SECT. 7. In any case where the Court shall have levied an assessment against stockholders as in this act provided, for a less amount or proportion than the full amount of the liability upon or on account of the stock of said corporation, and it shall thereafter be made to appear to the satisfaction of said Court, by
36 petition or otherwise, and upon hearing as hereinbefore provided, that by reason of the insolvency of stockholders, or for any other cause, it is necessary or desirable or for the interest of creditors that another and further assessment upon or against said stock be levied, the Court shall by order direct and levy a further and additional assessment for such amount, proportion or percentage of the liability upon or on account of each share of said stock, as the Court in its discretion may deem proper, and in the same manner may levy further and additional assessments upon said stockholders, and against said stock, not exceeding in the aggregate the maximum amount of liability, upon or on account of the stock of said corporation.

SECT. 8. All the provisions of this act shall apply to any such assessment levied by said Court after the first, and to the proceedings preliminary to levying and directing the same, to the same extent and with the same force and effect as to the first assessment so levied under the provisions of this act.

SECT. 9. Where two (2) or more assessments are levied or directed, the assignee or receiver may join the causes of action accruing against any stockholder upon any two or more such assessments in a single action against such stockholder or he may, at his discretion, unless otherwise directed by the Court, maintain a separate action against each stockholder for each successive assessment levied or directed.

That said laws continued in force without change, modification or amendment until the first day of March, 1906, at which date the Revised Laws of the State of Minnesota for 1905 took effect, that in and by the said Revised Laws the wording of the said sections
37 of Chapter 272 of the General Laws of Minnesota for 1899 was changed and amended so that by Sections 3184 to 3188 inclusive of said Revised Laws, which said sections of said Revised Laws are still in full force and effect, it was provided as follows, to-wit:

"3184. Enforcement of stockholders' liability.—Whenever it shall be made to appear by the petition of a receiver or assignee of a corporation, or any creditor thereof whose claim has been filed, that any constitutional, statutory or other liability of stockholders or directors or both exists, and that it is necessary to resort to the same, the court shall appoint a time for hearing, not less than thirty nor more than sixty days thereafter, and order such notice thereof as it deems proper, by publication or otherwise, to be given. When the receiver is not the petitioner, personal notice shall be given to him. ('99 c. 273 ss. 1, 2)."

"3185. Hearing Upon the Petition.—Upon such hearing after proof of due service of notice, the court shall receive and consider such evidence by affidavit or otherwise as may be presented by the

receiver, or by any creditor, officer, or stockholder, appearing in person or by attorney, upon the following points:

1. The nature and probable extent of the indebtedness of the corporation;

2. The probable expense of the receivership;

3. The probable amount of available assets;

4. The parties liable as stockholders, the nature and extent of the liability of each, and their probable solvency or responsibility.

If it appears that the available assets, or such amount as may be realized therefrom within a reasonable time, will be insuffi-
38 cient to pay such expenses and indebtedness in full and without delay, the court shall order a ratable assessment upon all parties liable as stockholders, or upon account of any stock of such corporation, for such amount, proportion, or percentage of such liability upon or on account of each share of such stock as it shall deem proper considering the probable solvency and responsibility of the stockholders and the probable expense of collecting such assessment, and shall direct payment of the amount so assessed against each share of such stock to the assignee or receiver, within the time specified in such order. ('99, c. 272 s. 3)."

"3186. Contents of Order—Conclusiveness.—Such order shall authorize and direct the assignee or receiver to collect the amount so assessed, and, on failure of any one liable to such assessment to pay the same within the time prescribed, to prosecute an action against him, whether resident or non-resident, and wherever found. Such order shall be conclusive as to all matters, relating to the amount, propriety, and necessity of the assessment, against all parties therein adjudged liable upon, or on account of any stock or shares of such corporation, whether appearing or being represented at the hearing or not, or having notice thereof or not. ('99, c. 272 ss. 4, 5)."

"3187. Actions for Assessments, How and Where Prosecuted.—Upon expiration of the time specified in the order for the payment of assessments, the assignee or receiver shall commence action against every party so assessed and failing to pay, wherever he or any property subject to process in such action is found, unless he shall report to the court that he believes such stockholder to be insolvent, or that the expenses of the prosecution will prob-
39 ably exceed the amount likely to be collected, in which case the court, unless satisfied to the contrary, shall order action suspended as to such party. ('99, c. 272 c. 6)."

"3188. Additional Assessments, How Levied.—Joinder of Causes.—Whenever, at any time an assessment for an amount less than the maximum stockholders' liability has been levied, it shall appear, by petition or otherwise, and after hearing as hereinbefore provided, that by reason of the insolvency of stockholders, or for any other cause, it is necessary, for the interest of creditors, that a further assessment be levied, the court shall order the same for such amount, proportion or percentage as it may deem proper; and in the same manner, and with like effect, at any time thereafter may levy additional assessments, not exceeding in the aggregate

the maximum stockholders' liability. Whenever two or more assessments shall have been levied, the assignee or receiver may recover therefor in a single action, or, unless otherwise directed, may maintain a separate action against each stockholder for each successive assessment. ('99, c. 272 ss. 7-9)."

That this plaintiff, by virtue of the laws of the State of Minnesota, and his appointment as such Receiver, became, and was and is the representative of all the stockholders and creditors of said insolvent corporation, is invested with the title to all the rights of action possessed by said corporation, including the aforesaid liability of its stockholders, and is authorized to maintain such actions as are necessary to recover the assets thereof, included among which is the liability of said defendant hereinbefore set forth.

That on the 16th day of April, 1902, the plaintiff, as such Receiver, duly made and caused to be filed with and presented to said District Court of said Washington County, according to law,
40 a petition by the plaintiff as such Receiver, praying among other things, that said Court might, by order or judgment in said action, direct and levy a ratable assessment upon the parties liable as stockholders of said Thresher Company, for such amount, proportion, or percentage of the liability, upon or on account of each share of said stock, as the said Court should deem proper after hearing, as by law provided, pursuant to the provisions of Chapter 272 of the General Laws of Minnesota for the year 1899 (An Act entitled "An Act to provide for the better enforcement of the liability of stockholders of corporations"), as hereinbefore set forth, and praying that said Court by order appoint a time for hearing such petition and application, and direct such notice thereof to be given as said Court should deem proper.

That on said 16th day of April, 1902, said Court duly made and entered its order in said last-mentioned action in pursuance of the provisions of said Chapter 272 of the Laws of 1899; that notice of said order was duly given in the manner prescribed by said order, notice of said order being duly published and served or mailed as therein directed; and that a copy of said order was duly mailed to the defendant herein more than twenty days prior to the date of hearing specified therein. That said matter, having been duly adjourned from time to time, and having duly come on for final hearing on the 10th day of December, 1902, at which time evidence was introduced by the Receiver and by certain objecting stockholders in said Thresher Company, and the said matter having been orally argued to said Court by counsel on behalf of said stockholders and by counsel on behalf of this plaintiff, thereafter, and on the 22nd day of December, 1902, said Court duly made and entered its order or decree in said action, a true copy of which said
41 order or decree is hereto annexed, marked "Exhibit A," and hereby referred to and made a part hereof as fully as if set up at length herein, and said last-mentioned order or decree has never been in any manner reversed, modified or set aside.

That said Court, in and by said order or decree, adjudged that an assessment of thirty-six (36) per cent. of the par value of each

share of the capital stock of said Thresher Company—to-wit, the sum of eighteen dollars ($18) on each share thereof be, and the same was thereby, assessed upon and against each and every share of said capital stock, and upon and against the person, corporation or party liable as a stockholder of said Thresher Company for, upon or on account of said shares of stock, and that each and every person, corporation or party liable as such stockholder of said Thresher Company pay, and was thereby directed to pay to this plaintiff, as Receiver of said Thresher Company, at his office in the City of Stillwater, County of Washington and State of Minnesota, within thirty days after the date of said order, the said sum of eighteen dollars ($18) for and on account of each and every share of said stock for or upon which said person, corporation or party was liable as a stockholder of said Thresher Company as aforesaid, and that in and by said order or decree this plaintiff, as such Receiver, was ordered to give due notice of such order or decree by mailing a copy of the same within ten days from the date thereof to each stockholder of said Thresher Company whose name and address *was* known to said Receiver.

That said notice of said last mentioned order of said District Court of said Washington County was duly given by the plaintiff as such Receiver, as prescribed by said order, and in the manner directed thereby.

That certain stockholders of said Thresher Company who duly intervened in said last mentioned action, and objected to the issuance of said last mentioned order or decree and the levy of any assessment, duly prosecuted an appeal from said last men-
42 tioned order or decree to the Supreme Court of said State of Minnesota; that said appeal was duly heard and considered by said Supreme Court; and that at the April Term, A. D. 1903, of said Court judgment was rendered and entered in said matter in and by said Supreme Court, determining and adjudging that the said order or decree so appealed from be in all things affirmed.

That the plaintiff gave notice of the decision and judgment of said Supreme Court in the matter of said order or decree by mailing a copy of said order and of the opinion of said Supreme Court to each stockholder of said Thresher Company whose name and address were known to the plaintiff.

In and by authority of the last mentioned order and of the constitution and the laws of the State of Minnesota there is due and owing from the defendant to the plaintiff as such Receiver the sum of one thousand nine hundred and ninety-eight dollars ($1998.) and interest thereon at the rate provided by the laws of said State of Minnesota, to-wit, at the rate of six per cent. per annum from the twenty-first day of January, 1903. That more than thirty days have elapsed since the date of said order and the plaintiff as such Receiver has duly demanded of the defendant the payment of the amount due from her as such stockholder of said Minnesota Thresher Company under and pursuant to said order; and the defendant has

failed and refused to pay the same or any part thereof, and no part thereof has been paid.

And for a separate and further cause of action the plaintiff here reaffirms all the allegations contained in Folio 1 to Folio 60, and further says that on the 1st day of May, 1907, the plaintiff, as such Receiver, duly made and caused to be filed with and presented to said District Court of said Washington County, according to
43 law, a further petition by the plaintiff as such Receiver, praying, among other things, that said Court might, by order or judgment in said action, direct and levy a second ratable assessment upon the parties liable as stockholders of said Thresher Company, for such further and additional amount, proportion or percentage of the liability upon or on account of each share of the said stock, as said Court should deem proper after hearing thereon, as by law provided, pursuant to the provisions of the Laws of the State of Minnesota, and praying that said Court by order appoint a time for hearing such petition and application, and direct such notice thereof to be given as said Court should deem proper.

That on the said 1st day of May, 1907, said Court duly made and entered its order in said last-mentioned action in pursuance of the provisions of said Chapter 272 of the Laws of 1899; that notice of said last mentioned order was duly given in the manner prescribed by said order, such notice being duly published and served or mailed as therein directed; and that a copy of said order was duly mailed to the defendant herein on or before the 15th day of May, 1907. And that said matter having duly come on for hearing on the 11th day of June, 1907, at which time evidence was introduced by the Receiver and the said matter was submitted to the Court by counsel for the Receiver, and no opposition was made thereto on behalf of any of the stockholders of said Thresher Company, and it thereupon being made to appear to the satisfaction of the Court by said last-mentioned petition and the evidence introduced at said hearing that, by reason of the insufficiency of said first assessment to that end, and the inability of the Receiver to enforce the same against a large number of stockholders, and for other causes, it was necessary and desirable and for the interest of the creditors that another and
44 further assessment upon or against said stock be levied, the said Court then and thereupon directed and levied a further and additional assessment for such amount, proportion and percentage of the liability upon or on account of each share of said stock, as said Court in its discretion deemed proper, and then and thereupon duly made and entered its further order or decree in said action therefor and to that end, a true copy of which said order or decree is hereto annexed, marked "Exhibit B," and hereby referred to and made a part hereof as fully as if set up at length therein, and said last-mentioned order has never been in any manner reversed, modified or set aside.

That said Court, in and by said last-mentioned order or decree, adjudged that a further assessment of sixty-four per cent. (64) of the par value of each share of the capital stock of said Thresher Company to-wit, the sum of thirty-two dollars ($32) on each share thereof

be and the same was thereby, assessed upon and against each and every share of said capital stock, and upon and against the person, corporation or party liable as a stockholder of said Thresher Company for, upon or on account of said shares of stock, and that each and every person, corporation or party liable as such stockholder of said Thresher Company pay, and was thereby directed to pay to this plaintiff, as Receiver of said Thresher Company, at his office in the City of Stillwater, County of Washington and said State of Minnesota, within thirty days after the date of said order, the said sum of thirty-two dollars ($32) for and on account of each and every share of said stock for or upon which said person, corporation or party was liable as a stockholder of said Thresher Company as aforesaid, and that in and by said last mentioned order or decree this plaintiff, as such Receiver, was ordered to give due notice of such order or decree by mailing a copy of the same within ten days
45 from the date thereof to each stockholder of said Thresher Company whose name and address *was* known to said Receiver.

That notice of said last-mentioned order of said District Court of said Washington County was duly given by the plaintiff as such Receiver, as prescribed by said order, and in the manner directed thereby.

That in and by the authority of said last mentioned order or decree, and the constitution and laws of the State of Minnesota, there is due and owing from the defendant to the plaintiff, as such Receiver, the sum of three thousand five hundred fifty-two dollars ($3,552.00) and interest thereon at the rate of six per cent. per annum from the 11th day of July, 1907; that more than thirty days have elapsed since the date of said last mentioned order, and that the plaintiff, as such Receiver, has duly demanded of the defendant payment of the amount due from her as such stockholder of said Thresher Company, under and pursuant to said order; that the defendant has failed and refused to pay the same or any part thereof, and that no part thereof has been paid.

Wherefore, the plaintiff as such Receiver demands judgment against the defendant for the sum of one thousand nine hundred ninety-eight dollars ($1,998.00.) and interest thereon at the rate of 6% per annum from the 21st day of January, 1903, under the first cause of action alleged in said complaint. And the plaintiff as such Receiver further demands judgment against the defendant for the sum of three thousand five hundred fifty-two dollars ($3,552.00) and interest thereon from the 11th day of July, 1907, at the rate of 6% per annum under the second cause of action alleged in said complaint, and for the costs and disbursements of this action.

JONES & SCHUBRING,
Plaintiff's Attorneys, Madison, Wis.
C. A. SEVERANCE AND
C. W. G. WITHEE,
Of Counsel.

46 STATE OF WISCONSIN,
County of Dane, ss:

Burr W. Jones being first duly sworn on oath deposes and says that he is one of the attorneys of the plaintiff above named; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters stated on information and belief and as to those matters he believes the same to be true.

That the plaintiff is not a resident of the State of Wisconsin and is not within the county where this action is brought and where deponent resides. That all the material allegations of said complainant are within his personal belief. That the grounds of deponent's belief are an examination of the records on which said complaint is based, and the judicial proceedings therein stated, and information derived from the agents and attorneys of the plaintiff who have personal knowledge of all of said facts, and from conversations had with the agent of the defendant. And the reason why said verification is made by deponent is that the plaintiff is not within this state or county.

BURR W. JONES.

Subscribed and sworn to before me this 15th day of August, 1907.
DAISY E. LORIGAN,
Notary Public, Dane County, Wisconsin.

47 "EXHIBIT A."

STATE OF MINNESOTA,
County of Washington, ss:

District Court, First Judicial District.

MERCHANTS NATIONAL BANK OF ST. PAUL, MINN. (a Corporation),
Plaintiff,
v.
MINNESOTA THRESHER MANUFACTURING COMPANY (a Corporation),
Defendant.

Order.

This matter having come on to be heard at a special term of this court held at the Court House in the City of Stillwater, in said County and State, on Tuesday, the 10th day of June, 1902, at ten o'clock in the forenoon, pursuant to an order made and entered herein on the 16th day of April, 1902, upon the petition of Theodore R. Converse, Receiver of said defendant corporation, which petition was duly filed with the Clerk of this court, praying among other things that this court might, by order herein, direct and levy a ratable assessment upon the parties liable as stockholders of said defendant corporation, for such amount, proportion or percentage of

the liability, for or on account of each share of said stock, as the court should deem proper after hearing as by law provided, pursuant to the provisions of Chapter 272 of the General Laws of Minnesota for the year 1899; and said Receiver having duly appeared at said special term of court on the said 10th day of June, 1902, in support of the said petition of said Receiver by Messrs. Davis, Kellogg & Severance, his attorneys; and Messrs. Koon, Wheelan and Burnett, Charles P. Searle, and J. H. Benton, Jr. having appeared in opposition thereto on behalf of the following named stockholders of said defendant, to-wit:

48 D. N. Morgan, of Bridgeport, Conn.; George E. Carter, of Boston, Mass.; Dime Savings Bank, of Norwich, Conn.; Hingham National Bank, of Hingham, Mass.; Mechanics National Bank, of Worcester, Mass.; Great Falls National Bank, of Great Falls, N. H.; Naumkeag National Bank, of Salem, Mass.; Home National Bank, of Brockton, Mass.; and Second National Bank, of Bangor, Maine, and said counsel for objecting stockholders having filed a written objection and answer to the said petition, to which a reply was duly filed by the counsel for said Receiver, and it appearing to the satisfaction of the Court that copies of said order dated April 6th, 1902, were duly published, mailed and served in the manner therein prescribed, and due notice of said hearing was duly given by said Receiver to the defendant and to each stockholder of record of the defendant, as directed by said order, and the said matter having been adjourned from time to time, and having duly come on for final hearing on Wednesday, the 10th day of December, 1902, at which time evidence was introduced by the Receiver and by said objecting stockholders, and the said matter having been orally argued to this Court by M. B. Koon, Esq., one of the counsel for said objecting stockholders, on behalf of said stockholders, and by C. A. Severance, Esq., one of the attorneys for said Receiver, on behalf of said Receiver, and it appearing to the satisfaction of the Court, after hearing and considering the proofs and evidence introduced at said hearing by and in behalf of said parties respectively, and the arguments of counsel, that it is necessary and proper that an assessment of eighteen dollars ($18) on each share of capital stock of said corporation be directed and levied herein against all parties liable as stockholders of said defendant.

Now therefore, it is ordered, that an assessment of thirty-six per cent. (36%) of the par value of each share of the capital stock of said defendant—to-wit, the sum of eighteen dollars ($18)

49 on each share thereof be, and the same is hereby, assessed upon and against each and every share of said capital stock, and upon and against the person, corporation or party liable as a stockholder of defendant for, upon or on account of such shares of stock, and that each and every person, corporation or party liable as such stockholder of said defendant be, and he is hereby, directed to pay to Theodore R. Converse, Receiver of said defendant, at his office in the City of Stillwater, County of Washington and State of Minnesota, within thirty (30) days after the date of this order,

the said sum of eighteen dollars ($18) for and on account of each and every share of said stock for or upon which said person, corporation or party is liable as a stockholder of said defendant, as aforesaid.

Ordered further, That said Receiver forthwith proceed to collect the several amounts due from the several persons, corporations and parties liable as stockholders of said defendant under the terms of this order, and hold the amount thus collected subject to the further order of this court herein.

Ordered further, That in case any party, corporation or party liable as a stockholder of said defendant shall fail to pay the amount hereby assessed against the share or shares of stock held or owned by such stockholder, or upon or on account of which he or it may be liable, within the time hereinbefore specified, said Receiver is hereby directed and authorized to forthwith institute and prosecute such action or actions or other proceedings against such person, persons, corporation or party liable in any court having jurisdiction, whether in this State or elsewhere, which said Receiver may deem necessary or proper for the recovery of the amount due from such person, persons, corporation or party under the terms of this order.

Ordered further, That said Receiver give due notice of this order by mailing a copy of the same within ten days from the date hereof to each stockholder of said defendant whose name and
50 address *is* known to said Receiver.

By the Court,

W. C. WILLISTON,
District Judge.

Dated December 22nd, 1902.

51 "EXHIBIT B."

STATE OF MINNESOTA,
County of Washington:

District Court.

MERCHANTS NATIONAL BANK OF ST. PAUL, MINN.,
v.
MINNESOTA THRESHER MANUFACTURING COMPANY, a Corporation,
Defendant.

Order.

This matter having come on to be heard at a Special Term of this Court held at the Court House in the City of Stillwater, in said County and State, on Tuesday, the 11th of June, 1907, at ten o'clock in the forenoon, pursuant to an order made and entered herein on the first day of May, 1907, upon the petition of Theodore R. Converse, Receiver of said defendant corporation, which petition was duly filed with the Clerk of this Court, praying among

other things that this Court might, by order herein, direct and levy a further and additional ratable assessment upon the parties liable as stockholders of said defendant corporation, of sixty-four per cent (64) of the par value of the stock held by said stockholders respectively for or on account of each share of said stock as by law provided; and said Receiver having duly appeared at said Special Term of Court on said eleventh day of June, 1907, in support of said petition by Messrs. Davis, Kellogg & Severance and Robert E. Olds, Esq., his attorneys; and there being no appearance in opposition thereto;

And it appearing to the satisfaction of the Court that copies of said order dated May 1st, 1907, were duly published, mailed and served in the manner therein prescribed, and that due notice of said hearing was duly given by said Receiver to the defendant and to each stockholder of record of the defendant, as directed by said order; and evidence having been orally introduced
52 by the Receiver and the said matter having been orally argued to this Court by Robert E. Olds, Esq., one of the attorneys for said Receiver on behalf of said Receiver, and it appearing to the satisfaction of the Court after hearing and considering the proofs and evidence introduced at the said hearing by and in behalf of said parties respectively, and the arguments of counsel, that it is necessary and proper that a further and additional assessment of $32. on each share of the capital stock of said corporation in addition to the assessment of $18. on each of said shares heretofore directed and levied in and by the order of the Court made and entered on the 22nd of December, 1902, be directed and levied herein against the parties liable as stockholders of said defendant.

Now therefore, it is ordered, That a further and additional assessment of sixty-four per cent. of the par value of each share of the capital stock of said defendant, to-wit: the sum of $32 on each share thereof be, and the same is hereby assessed upon and against each and every share of said capital stock, and upon and against the person, corporation or party liable as a stockholder of defendant for, upon or on account of such shares of stock, and that each and every person, corporation or party liable as such stockholder of said defendant be and he is hereby directed to pay to Theodore R. Converse, Receiver of said defendant, at his office in the City of Stillwater, County of Washington, and State of Minnesota, within thirty (30) days after the date of this order, the said sum of $32 for and on account of each and every share of said stock for or upon which said person, corporation or party is liable as a stockholder of said defendant as aforesaid; the said assessment hereby directed and levied being in addition to the assessment of 36% upon each share of said capital stock, to-wit: the sum of $18. per share
53 heretofore directed and levied in and by the order of this Court made and entered on the 22nd day of December, 1902;

Order- further, that said Receiver forthwith proceed to collect — the several persons, corporations and parties liable as stockholders of said defendant under the terms of this Order, and hold the

amount thus collected subject to the further order of this Court herein;

Ordered further, that in case any person, corporation or party liable as a stockholder of said defendant shall fail to pay the amount hereby assessed against the share or shares of stock held or owned by such stockholder, or upon or on account of which he or it may be liable within the time hereinbefore specified said Receiver is hereby directed and authorized to forthwith institute and prosecute such action or actions or other proceedings against such person, persons, corporation or party liable, in any court having jurisdiction, whether in this state or elsewhere, which said Receiver may deem necessary or proper for the recovery of the amount due from such person, persons, corporation or any party under the terms of this Order;

Ordered further, that said Receiver give due notice of this order by mailing a copy of the same within ten (10) days from the date hereof to each stockholder of said defendant whose name and address is known to said Receiver.

By the Court:

P. H. STOLBERG,
District Judge.

Dated June 11th, 1907.

54 (Endorsements:) State of Wisconsin, Circuit Court, Dane County. Theodore R. Converse as Receiver of Minnesota Thresher Mfg. Co., plaintiff, vs. Jeneva S. McCauley, Defendant. Summons and Complaint. Service of a copy of the within —— admitted this — day of ——, 190–. Jones & Schubring, Badger Block, Madison, Wisconsin, Plaintiff's Attorneys. C. A. Severance and C. W. G. Withee of Counsel. Circuit Court Dane County, Wis. Filed Aug. 15, 1907. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk Supreme Court, Wis.

55 STATE OF WISCONSIN:

Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,

vs.

JENEVA S. MCCAULEY, Defendant.

And now comes the above defendant by Buell & Lucas her attorneys, and demurs to the plaintiff's complaint in this action because it appears on the face thereof:

1. That the court has no jurisdiction of the person of the defendant.

2. That the court has no jurisdiction of the subject of the action.

3. That the plaintiff has no legal capacity to sue: in that he is a receiver appointed, in an equity action pending in a State Court in the State of Minnesota and as such has no extra territorial jurisdiction.

4. That the complaint does not state facts sufficient to constitute a cause of action.

BUELL & LUCAS,
Defendant's Attorneys.

(Endorsements:) State of Wisconsin, Circuit Court for Dane County. Theodore R. Converse as Receiver of the Minnesota Thresher Manufacturing Company, plaintiff, vs. Jeneva S. McCauley, Defendant. Demurrer to Complaint. Service of a copy of the within demurrer admitted this 12th day of October, 1907. Jones & Schubring and C. A. Severance, Plaintiff's Attorneys. Buell & Lucas, Defendant's Attorneys. Circuit Court Dane County, Wis. Filed Oct. 12, 1907. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

56 STATE OF WISCONSIN:

Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,
vs.
JENEVA S. MCCAULEY, Defendant.

Directions for Order Sustaining Demurrer.

By the COURT:

It is the settled judicial policy of this state that a Minnesota receiver may not use the courts of this state to enforce such a liability as that upon which plaintiff's cause of action is grounded. The adoption of this policy "is a question exclusively for the courts of this (that) state to decide." Finney v. Guy, 189 U. S. 335, 23 Sup. Ct. Rep. 558, 562.

Bernheimer v. Converse, 206 U. S. 516, 27 Sup. Ct. Rep. 755, does not question this rule, in fact does not even consider it one way or the other. That case turns upon the question of whether the change in the statutory method in enforcing the stockholders' liability made by the recent amendment of the Minnesota law violates the obligations on a contract within the prohibition of the federal constitution. The decision also declares the rule that the receiver appointed under the laws of Minnesota had the authority to maintain an action in a foreign jurisdiction. This rule is not questioned in Wisconsin, but is expressly recognized in the last case declaring the judicial policy of this state. Hunt v. Whewell, 122 Wis. 33, 42.

57 The court finds nothing that will warrant it in departing from the rule that a receiver appointed in a foreign jurisdiction cannot enforce such a claim as that here presented by an action in the courts of this state.

The demurrer to the complaint is sustained. Defendant's counsel may draw the proper order, which may provide that the plaintiff

may serve the amended complaint within twenty days from the date of the service of this order upon condition that he pay $10 costs.

Dated July 6, 1908.

EDWARD H. SMITH,
Official Reporter.

(Endorsements:) Circuit Court, Dane County. Theodore R Converse, as Receiver of the Minn. Thresher Mfg. Co., Plaintiff, vs Jeneva S. McCauley, Defendant. Directions for Order Sustaining Demurrer. Circuit Court, Dane County. Filed Jul- 6, 1908 Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

58 STATE OF WISCONSIN:

Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of The Minnesota Thresher Manufacturing Company, Plaintiff,
vs.
JENEVA S. MCCAULEY, Defendant.

The defendant having demurred to the complaint of the plaintiff herein, and the said demurrer having been brought on for argument at the regular May 1908 term of this court and the plaintiff having appeared upon said argument by Jones & Schubring its attorneys and the defendant having appeared by Messrs. Buell & Lucas her attorneys, and the court being fully advised in the premises:

It is on motion of Buell & Lucas, attorneys for said defendant ordered that the said demurrer to said complaint, be and the same hereby is, sustained, but with leave to said plaintiff to file and serve an amended complaint upon said plaintiff's attorneys within 20 days from the date hereof upon payment of $10 costs, and upon failure to so amend or upon plaintiff's election before said time not to so amend judgment be entered dismissing the complaint in this action with costs.

Dated July 7, 1908.

By the Court: E. RAY STEVENS, *Judge.*

(Endorsements:) Circuit Court, Dane County. Theodore R. Converse, as Receiver, &c., Pl'ff, vs. Jeneva S. McCauley, Def't. Order Sustaining Demurrer. Service of a copy of the within order admitted this 7th day of July, 1908. Jones & Schubring, Pl'ff's Att'ys. Filed and Entered Judg. & Rec'd, Book 23, page 8, July 7, 1908. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis. Buell & Lucas, Def't's Att'ys.

59 STATE OF WISCONSIN:

In Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of The Minnesota Thresher Manufacturing Company, Plaintiff,
vs.
JENEVA S. MCCAULEY, Defendant.

And now comes the plaintiff above named and excepts to the order of the Court sustaining the demurrer in the above entitled action, said order being dated July 7th, 1908.

JONES & SCHUBRING AND
C. A. SEVERANCE,
Plaintiff's Attorneys.

Dated this 10th day of July, 1908.

(Endorsements:) Circuit Court Dane County, Wis. Filed Jul- 10, 1908. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

60 STATE OF WISCONSIN:

Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of The Minnesota Thresher Manufacturing Company, Plaintiff,
vs.
JENEVA S. MCCAULEY, Defendant.

The Court having made and entered an order in the above entitled action on the 7th day of July, 1908, sustaining the defendant's demurrer to the plaintiff's complaint in this action, but with leave to the plaintiff to file within twenty days an amended complaint in this action, and that in case the said plaintiff should elect not to file or should fail to file such amended complaint, that said action be dismissed, and the said plaintiff having elected not to file an amended complaint in said action, but to stand upon his original complaint and the defendant having appeared by Buell & Lucas, her attorneys, and the plaintiff having appeared by Jones & Sch-bring his attorneys:

It is on motion of said defendant's attorneys ordered and adjudged that the complaint in this action be and the same hereby is dismissed, and that the defendant recover of the plaintiff her costs and disbursements taxed at the sum of $37.67.

Dated July 10, 1908.

By the Court: LAWRENCE O. LARSON, *Clerk.*

And now comes the plaintiff and excepts to the above judgment and to the order on which the same is based.

July 10, 1908.

JONES & SCHUBRING,
Att'ys for Pl'ff.

61 (Endorsements:) Circuit Court, Dane County. Theodore R. Converse, as Receiver, &c., Pl'ff, vs. Jeneva S. McCauley, D'f't. Judgment dismissing action. Service of a copy of the within judgment admitted this 10th day of July, 1908. Judgment Docket L, page 137. Buell & Lucas, Def't's Att'ys. Filed and Entered Judg. & Rec. Book 23, Page 11, Jul- 10, 1908. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

62 STATE OF WISCONSIN:

Circuit Court for Dane County.

THEODORE R. CONVERSE, as Receiver of The Minnesota Thresher Manufacturing Company, Plaintiff,

v.

JENEVA S. MCCAULEY, Defendant.

To Jones & Schubring, Attorneys for the above named plaintiff:

Please take notice that judgment was rendered in the above entitled action on the 10th day of July, 1908, dismissing said action, and that the defendant have and recover from said plaintiff the sum of $37.67, costs.

Dated July 11th, 1908.

BUELL & LUCAS,
Defendant's Attorneys.

(Endorsements:) Circuit Court, Dane County. Theodore R. Converse as receiver, &c., Pl'ff, vs. Jeneva S. McCauley, D'f't. Notice of entry of judgment. Service of a copy of the within notice admitted this 10th day of July, 1908. Jones & Schubring & C. A. Severance, Pl'ff's Att'ys. Buell & Lucas, D'f't's Att'ys. Circuit Court, Dane County. Filed Jul- 11, 1908. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

63 (Endorsements:) State of Wisconsin, Circuit Court, Dane County. Theodore R. Converse, as Receiver of the Minnesota Thresher Mfg. Co., Plaintiff, vs. Jeneva S. McCauley, Defendant. Notice, Certificate & Undertaking. Service of copy of within Notice of Appeal and Undertaking admitted July 11, 1908. Buell & Lucas, Def't's Att'ys. Lawrence O. Larson, Clerk Circuit Court, Dane Co., Wis. Circuit Court Dane County, Wis. Filed Jul- 11, 1908. Lawrence O. Larson, Clerk. Filed Jul- 11, 1908. Clarence Kellogg, Clerk of Supreme Court, Wis.

64 STATE OF WISCONSIN,
Dane County, ss:

In Circuit Court for Dane County.

I, Lawrence O. Larson, Clerk of said Court, do hereby certify that the foregoing and annexed paper writings are the original Summons;

Certificate of Service; Complaint; Demurrer to Complaint, with admission of service; Directions for Order Sustaining Demurrer; Order Sustaining Demurrer, with admission of Service; Exceptions to order Sustaining Demurrer; Judgment dismissing action, with admission of service; Exceptions; Notice of Entry of Judgment, with admission of service; Notice of Appeal to Supreme Court and Undertaking on Appeal, with admission of service, which have been filed in my office in the action wherein Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Company, is plaintiff, and Jeneva S. McCauley is defendant, and that the same are hereby transmitted to the Judges of the Supreme Court of the State of Wisconsin, in pursuance of said notice of appeal.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Madison, in said County, this 11th day of July A. D. 1908.

[SEAL.] LAWRENCE O. LARSON, *Clerk.*

(Endorsements:) State of Wisconsin, Circuit Court for Dane County. Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Co., Plaintiff, vs. Jeneva S. McCauley, Defendant. Return to Supreme Court. Filed Jul- 11, 1908, Clarence Kellogg, Clerk of Supreme Court, Wis.

65 And afterwards, to-wit: on the second day of October, A. D. 1908, the same being the twelfth day of said term, the following proceedings were had in this court, in said cause, that is to say:

Dane Circuit Court.

THEODORE R. CONVERSE, as Receiver, &c., Appellant,
vs.
JENEVA S. MCCAULEY, Respondent.

And now at this day came the parties herein by their attorneys, and this cause having been argued by B. W. Jones, Esq. for the said appellant, and by C. E. Buell, Esq. for the said respondent, and submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

66 And afterwards, to-wit: on the tenth day of November, A. D. 1908, the same being the nineteenth day of said term, judgment was rendered in said cause, by this court, in the words and figures following, that is to say:

Dane Circuit Court.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Appellant,
vs.
JENEVA S. MCCAULEY, Respondent.

Opinion by Justice Barnes.

This cause came on to be heard on appeal from the judgment of the circuit court of Dane county, and was argued by counsel. On consideration whereof: it is now here ordered and adjudged by this court, that the judgment of the circuit court of Dane county, in this cause, be and the same is hereby affirmed, with costs against the said appellant taxed at the sum of forty-eight and 75/100 dollars ($48.75).

Justice Timlin dissents.

67 And thereupon, to-wit: on the tenth day of November, A. D. 1908, this court, by Justice Barnes, filed its opinion in said cause, in the words and figures following, that is say:

68 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff and Appellant,
vs.
JENEVA S. MCCAULEY, Defendant and Respondent.

BARNES, *J.* This case in all material respects is identical with Converse v. Hamilton, heard therewith, and is controlled thereby.

By the Court: Judgment affirmed.

69 And on the tenth day of November, A. D. 1908, a dissenting opinion in this cause was filed by Justice Timlin, in the words and figures following, that is to say:

70 STATE OF WISCONSIN:

In Supreme Court.

THEODORE R. CONVERSE, Receiver, Appellant,
vs.
JENEVA S. MCCAULEY, Respondent.

TIMLIN, *J.* (Dissenting.) Upon the questions involved in this cause I think the law is in a regrettable condition of uncertainty.

Hancock National Bank v. Farnum, 176 U. S., 640; Huntington v. Attrill, 146 U. S. 657; Laing v. Rigney, 160 U. S. 531; Harding v. Harding, 198 U. S. 317; Finney v. Guy, 189 U. S. 335; Bernheimer v. Converse, 206 U. S. 516; Hunt v. Whewell, 122 Wis. 33; Finney v. Guy, 106 Wis. 256; Eau Claire v. Benson, 106 Wis. 624.

This is not a contest relating to property in this state and between creditors resident in this state and a foreign receiver. There are many such cases and there is some confusion on that subject. 1 Wharton Conflict of Laws, 3rd ed., sec. 390¾ et seq. But in this state the rules of law controlling that class of cases are fairly settled. There can ordinarily be in such cases no questions concerning the faith and credit to be given to judgments of a sister state because creditors of that class are not parties to the suit in which the receiver was appointed, nor is the property in this state bound *in rem*. But where, as in the instant case, the objection is made by the debtor against whom the action is brought by the foreign receiver and where such debtor was a party to the suit which resulted in the appointment of the foreign receiver, at least so far as that suit authorized an assessment and invested such receiver with the right to bring action or with the title in trust to the chose, different considerations arise. Bernheimer v. Converse, 206 U. S. 516; Converse v. Ayer, 84 N. E. Rep. 98. In the last described instances sec. 1, Art. IV Const. U. S. should control the rulings of the state court before which the foreign receiver brings his action to enforce a
71 demand in favor of such receiver and against such defendant. In such instances we should give the order or decree of the foreign court investing the receiver with the right to bring the action the same force this decree would have in the state where made. Hancock National Bank v. Farnum, 176 U. S. 640. The order is final and conclusive on these questions in Minnesota as we are informed. See Griggs v. Becker, 87 Wis. 313. So also, if by the law of the foreign state the title to all personal property or choses in action having a *situs* in that state is vested in the receiver in trust the foreign receiver comes into this state with the same right to sue in the courts of this state as any citizen of another state having title as trustee and he need not invoke the law of his own state further than any other owner of a chattel or chose in action who has acquired title to the same in a sister state absolutely or in trust, is required to do, to manifest his ownership to the courts in this state.

The complaint here which may, in connection with an examination of the Minnesota statutes and decisions, be taken on demurrer to be true, states the force and effect of these proceedings in Minnesota. Hurley v. Donoghue, 116 U. S. 1, and Minnesota statutes and decisions referred to in Bernheimer v. Converse, and Converse v. Ayer, supra. This complaint informs us that the plaintiff by virtue of the laws of that state and his appointment as receiver, became, was and is the representative of all the stockholders and creditors of the insolvent corporation and invested with the title to all the rights of action possessed by said corporation and au-

thorized to maintain this action. He is not then merely a juristic person possessing the latter legal quality only by force of laws which have no extra territorial effect as was the case in Anglo &c. Co. v. Davis &c. Co., 191 U. S. 373; s. c. 169 N. Y. 506; and Hale v. Allinson, 188 U. S. 56. It is here averred that the receiver is a resident and citizen of Minnesota, Art. IV, sec. 2, Const. U. S. The court of his state by order or interlocutory decree to which defendant was a party (Converse v. Ayer, and Bernheimer v. Converse, supra)
72 invested him with title, in trust for other citizens, to this right of action. A statute of Wisconsin denying this decretal order the efficacy which it possessed in Minnesota, would be, I think, invalid. Christmas v. Russell, 5 Wall. 290; Keyser v. Lowell, 117 Fed. Rep. 400. Faith and credit must be given to "judicial proceedings." Sec. 1, Art. IV, Const. U. S. If so, a decision of the court to the same effect as such statutes must be erroneous. The discretion which comity permits the law forbids. The plaintiff has in such case a legal right. Whenever foreign law is necessarily invoked in any state for the purpose of establishing or maintaining juristic personality in a case where that is essential to maintain the suit, or for the purpose of maintaining a remedy, there being no right in the foreign state except that which is coupled with a particular remedy there given, which remedy on account of the absence of similar law in the state of the forum does not exist, then and in all such cases and in many other cases not necessary to mention here, the comity of the forum may or may not recognize such juristic person or such foreign law. When, however, the right of one of its citizens to maintain the action or his title to the chose has been adjudicated in the foreign state in an action to which the defendant was a party, the right to assert such right or title in this state in a court having general common law and equity jurisdiction is no longer a matter of comity but a matter of law.

I think the judgment should be reversed.

73 THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff in Error,

vs.

JENEVA S. McCAULEY, Defendant in Error.

I, Clarence Kellogg, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office in the above entitled cause.

That the original writ of error, the petition therefor with the assignment of errors and the prayer for reversal, the citation with the admission of service endorsed thereon, and a copy of the bond are appended to the return herein, and that they are all returned to the Supreme Court of the United States in obedience to the command of the writ of error hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said court, at Madison, this 21st day of April, A. D. 1909.

[Seal Supreme Court of Wisconsin.]

CLARENCE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

Endorsed on cover: File No. 21,643. Wisconsin Supreme Court. Term No. 212. Theodore R. Converse, Receiver of The Minnesota Thresher Manufacturing Company, plaintiff in error, vs. Jeneva S. McCauley. Filed April 30th, 1909. File No. 21,643.

11

Supreme Court of the United States

OCTOBER TERM, 1910.

Office Supreme Court
FILED
JAN 17 191
JAMES H. McKENN

No. 43

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company,
Plaintiff in Error.

vs.

JENEVA S. McCAULEY,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

BRIEF FOR PLAINTIFF IN ERROR.

CORDENIO A. SEVERANCE,
BURR W. JONES,
E. J. B. SCHUBRING,
Attorneys for Plaintiff in Error.

FRANK B. KELLOGG,
ROBERT E. OLDS,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1910.

No. 212.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company,

Plaintiff in Error.

vs.

JENEVA S. McCAULEY,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT.

This case is one of a series of suits brought by Plaintiff in Error against various persons alleged to be stockholders of the Minnesota Thresher Manufacturing Co. to recover assessments levied by the District Court of Washington County, Minnesota, which has jurisdiction of the estate of said Thresher Company. Several of these cases have reached this court:

First National Bank of Ottawa v. Converse, 200 U. S. 425;
Bernheimer v. Converse, 206 U. S. 516;
Converse v. First Nat'l Bank of Suffield, 212 U. S. 567,

and the case of *Converse v. Stewart*, dismissed during the present term on the ground that no federal question was presented.

The Minnesota Thresher Manufacturing Company, a corporation of the State of Minnesota, became insolvent, and pursuant to the practice prescribed by the statutes of that state, set forth in full in the complaint in this action (Transcript of Record, pp. 16 to 20), two assessments were made upon the parties liable as stockholders of said Thresher Company upon and on account of each share of the stock of that company held by them. The first assessment ordered by the said District Court, on the 22nd of December, 1902, was for 36% of the par value of the said stock. The order of assessment appears in full as Exhibit A attached to the complaint. (Trans. of Record, pp. 24 to 26.)

Owing to the fact that a sufficient amount was not realized from said assessment to pay the debts of said corporation, a second assessment was duly made for the remaining 64%, which assessment was ordered by the said District Court of Washington County on the 11th of June, 1907. Said order appears in full as Exhibit B attached to the complaint. (Trans. of Record, pp. 26 to 28.)

An action was thereafter brought in the Circuit Court for Dane County, Wisconsin, by the Plaintiff in Error as Receiver, against the Defendant in Error, Jeneva S. McCauley, to recover the amounts of said assessments with interest, it being alleged that the defendant was the lawful

owner and holder, subject to said liability, of 111 shares of the capital stock of said Thresher Company of the aggregate par value of $5,550. (Trans. of Record, p. 15, Fol. 32.) The complaint is in form practically similar to the pleadings in the other suits above mentioned, and especially the case of *Bernheimer v. Converse*. A demurrer was interposed to the complaint. (Trans. p. 28, Fol. 55.) This demurrer was sustained by an order of the Circuit Court for Dane County, which court, following the decision of the Supreme Court of Wisconsin in the case of *Hunt v. Whewell*, 122 Wis. 33, held that plaintiff could not maintain his suit, for the reason that "it is the settled judicial policy of this state that a Minnesota receiver may not use the courts of this state to enforce such a liability as that upon which plaintiff's cause of action is grounded." (Trans. of Rec. pp. 29 and 30, Fols. 56 to 58.)

The plaintiff elected not to file an amended complaint, but to stand upon his original complaint, and judgment was thereupon entered dismissing said complaint and awarding the defendant costs and disbursements taxed at $37.67. (Trans. of Rec. p. 31, Fol. 60.)

An appeal was perfected to the Supreme Court of Wisconsin, and the judgment of the Circuit Court of Dane County was affirmed with costs. 136 Wis., 594. (Trans. of Rec. p. 34, Fols. 66 to 68.) The Court said "This case in all material respects is identical with *Converse v. Hamilton, ante* p. 589, 118 N. W. 190, and is controlled thereby." The opinion of the majority of the court in the Hamilton case is printed in full in the record in *Converse v. Caroline A. Hamilton*, No. 211, on the docket of this court for the October term, 1910, which case will be argued with the one against defendant McCauley. (See Trans. of Rec. in Hamilton case, p. 34, Fols. 65 and 66.) This is followed

in that record with a dissenting opinion by Mr. Justice Timlin. (Pp. 35 and 36, Fols. 68 to 70.) 136 Wis., 591. Justice Timlin filed an identical dissenting opinion in the McCauley case, which is printed in the record. (Trans. pp. 34 to 36, Fols. 70 to 72.)

Plaintiff in Error insists here, as he did in the court below, that under the constitution of the United States, full faith and credit must be given to the interlocutory decrees of the District Court for Washington County, Minnesota, ordering the assessments on the stock of the said Thresher Company. The defendant asserts that under the doctrine of comity between states, it is open to the courts of Wisconsin to decide whether they will permit such an action as the one at bar to be pursued.

ASSIGNMENTS OF ERROR.

(Trans. pp. 5 to 7, Fols. 13 to 16.)

First. That the Supreme Court of the State of Wisconsin erred in determining that the plaintiff's complaint therein stated no cause of action and in refusing to reverse the judgment rendered in the defendant's favor in the Circuit Court of Dane County, Wisconsin, determining that said complaint stated no facts sufficient to constitute a cause of action.

Second. That the Supreme Court of the State of Wisconsin erred in determinnig that the opinion in the case of *Hunt v. Whewell*, 122 Wis. 33, in any way ruled this case, and in finding that as to said Supreme Court of the State of Wisconsin said decision was *stare decisis* as to all questions involved until a higher tribunal should reach a different conclusion.

Third. That the Supreme Court of the State of Wisconsin erred in determining that the question of comity was not

involved or in any way passed upon in the case of *Bernheimer v. Converse,* 206 U. S. 516, and that the said Bernheimer case was not in conflict with said decision in *Hunt v. Whewell,* 122 Wis. 33.

Fourth. That the Supreme Court of the State of Wisconsin erred in failing to find that Chapter 272 of the General Laws of 1899, of Minnesota and sections 3184-3190 of the Revised Laws of 1905, of Minnesota both declare that assessments levied pursuant to their provisions are conclusive upon stockholders wherever they may be.

Fifth. That the Supreme Court of the State of Wisconsin erred in failing to find that the representation which the defendant stockholder had by virtue of his membership in the said corporation was all that he was entitled to.

Sixth. That the Supreme Court of the State of Wisconsin erred in failing to find that the property of the defendant was not taken without due process of law under said proceedings under Chapter 272 of the General Laws of Minnesota for 1899, and Sections 3184 to 3190, inclusive, Revised Laws of 1893 of Minnesota.

Seventh. That the Supreme Court of the State of Wisconsin erred in finding in effect that it is the settled judicial policy of the State of Wisconsin that a Minnesota receiver may not use the courts of this state to enforce such a liability as that upon which plaintiff's cause of action is grounded and that the adoption of this policy is a question exclusively for the courts of this state to decide.

Eighth. That the Supreme Court of the State of Wisconsin erred in failing to find that an absolute right existed in the plaintiff to recover upon an assessment which was made by said interlocutory decree duly rendered by the Courts of the State of Minnesota in an action in which the defendant was represented by the corporation, and an action

in which the Minnesota court had jurisdiction of the defendant to the extent necessary to make such interlocutory decree.

Ninth. The said Supreme Court erred in failing to find that it is not open to the Courts of this State to decide whether under the doctrine of comity between states it will permit such an action as the one at bar to be pursued.

Tenth. The Supreme Court of the State of Wisconsin erred in failing to find that the liability of stockholders, though statutory in origin, is contractual in its nature, and that under the statute the cause of action is transitory and can be maintained in any tribunal having jurisdiction, where process could be served on the individual stockholder.

Eleventh. The Supreme Court of the State of Wisconsin erred in failing to find that Section 1, Article 4 of the Constitution of the United States, should control the rulings of the State Court of Wisconsin in which the foreign receiver brings his action to enforce a judgment in favor of such receiver and against such defendant, and that this Court should give the orders and decrees of the Court of Minnesota the same force said orders and decrees would have in that state.

Twelfth. That the Supreme Court of the State of Wisconsin erred in failing to find that the said orders and decrees above mentioned by the Courts in the State of Minnesota were final and conclusive on the questions involved in said suit.

Thirteenth. That the Supreme Court of the State of Wisconsin erred in failing to find that said Receiver had the same right to sue in the courts of Wisconsin as any citizen of another State having title as Trustee.

Fourteenth. That the Supreme Court of the State of Wisconsin erred in denying the said orders and judgments

of said Minnesota Court the efficacy to which they were entitled in the State of Minnesota, and therefore failed to give full faith and credit to said judicial proceedings within the meaning of the Constitution of the United States.

ARGUMENT.

I.

IT WAS HELD BY THE SUPREME COURT OF MINNESOTA THAT THE MINNESOTA THRESHER MANUFACTURING COMPANY IS NOT EXCLUSIVELY A MANUFACTURING OR MECHANICAL CORPORATION, AND HENCE THE STOCKHOLDERS ARE LIABLE.

This was decided upon a contest of the first assessment sued upon in this action, *Merchants National Bank of St. Paul, Minn. v. Minnesota Thresher Manufacturing Co.* 90 Minn. 144. This court in *Bernheimer v. Converse, supra,* at page 524, concurred in this view:

> "Before entering upon a discussion of the objections urged against the validity of the assessment upon stockholders which is the subject of controversy here, we may say we find no reason to disagree with the judgment of the Supreme Court of Minnesota in holding the Minnesota Thresher Manufacturing Company to be a corporation organized for other than the purpose of carrying on any kind of manufacturing or mechanical business, and therefore not within the exception as to stockholders' liability in favor of corporations of that kind. *State v. Minnesota Thresher Man. Co.*, 40 Minnesota, 215; *Merchants Bank v. Minnesota Thresher Man. Co.*, 90 Minnesota, 144."

II.

THE PLAINTIFF RECEIVER UNDER CHAPTER 272 OF THE GENERAL LAWS OF MINNESOTA FOR 1899, AND SECTIONS 3184 TO 3190, INCLUSIVE, OF THE REVISED LAWS OF 1905, IS A

REPRESENTATIVE OF THE CORPORATION AND OF ITS CREDITORS, AND HAS TITLE TO THE ASSESSMENTS SUED UPON AND IS AUTHORIZED TO ENFORCE SUCH ASSESSMENTS BY PROPER PROCEEDINGS EITHER IN THE STATE OF MINNESOTA OR ELSEWHERE.

Bernheimer v. Converse, 206 U. S. 516;
Converse v. Ayer, (Mass.) 84 N. E. Rep. 98.

In the Bernheimer case this court, after reiterating the familiar rule that a chancery receiver having no other authority than that arising from his appointment as such, could not maintain an action in another jurisdiction, said:

> "In this case the statute confers the right upon the receiver, as a *quasi* assignee, and representative of the creditors, and as such vested with the authority to maintain an action. In such case we think the receiver may sue in a foreign jurisdiction."

Prior to the enactment of Chapter 272 of the Laws of 1899, the receiver did not have such title, being nothing but the ordinary chancery receiver, and hence he could not maintain an action to recover stockholders' liability outside the State of Minnesota.

Finney v. Guy, 189 U. S. 335;
Hale v. Allinson, 188 U. S. 56;
Finney v. Guy, 106 Wis. 256.

III.

CHAPTER 272 OF THE GENERAL LAWS OF 1899, AND SECTIONS 3184 TO 3190 OF THE REVISED LAWS OF 1905, MERELY CHANGED AND ENLARGED THE REMEDY FOR THE ENFORCEMENT OF STOCKHOLDERS' LIABILITY, AND DID NOT CHANGE THE SUBSTANTIVE RIGHT, AND HENCE THE SAID LAWS ARE CONSTITUTIONAL.

Bernheimer v. Converse, 206 U. S. 516;
Converse v. Ayer, (Mass.) 84 N. E. 98;
Straw & Ellsworth v. Kilbourne Co., 80 Minn. 125;
London & Northwest American Mortgage Co. v. St. Paul Park Improvement Co., 84 Minn. 144.

IV.

THE JUDGMENT AT LAW AGAINST THE THRESHER COMPANY IN THE STATE COURT OF MINNESOTA AND THE DECREE IN THE SUBSEQUENT SUIT BASED THEREON, BY WHICH DECREE THE RECEIVER WAS APPOINTED, CANNOT BE COLLATERALLY ATTACKED.

Bernheimer v. Converse, supra;
Converse v. Ayer, supra, and cases cited therein.
Mutual Life Insurance Co. v. Phoenix Insurance Co., 108 Mich. 170;
Bank v. Lawrence, 117 Mich. 669;
Hinckley v. Kettle River Co., 80 Minn. 32;
Parker v. Stoughton Mill Co., 91 Wis. 181.

V.

CHAPTER 272 OF THE GENERAL LAWS OF 1899, AND SECTIONS 3184 TO 3190 OF THE REVISED LAWS OF 1905, BOTH DECLARE THAT ASSESSMENTS LEVIED PURSUANT TO THEIR PROVISIONS, WHICH THE DEMURRER ADMITS WERE FOLLOWED IN THIS CASE, ARE CONCLUSIVE UPON STOCKHOLDERS WHEREVER THEY MAY BE.

This provision has been construed by the Supreme Court of Minnesota in *Straw & Ellsworth v. Kilbourne*, 80 Minn. 125, 136, by this court in the Bernheimer case at pages 532 and 533, and by the Supreme Judicial Court of Massachusetts in *Converse v. Ayer*, 84 N. E. 100, as follows:

Straw & Ellsworth v. Kilbourne:

"A person sued as a shareholder may show, if he can, that he is not a shareholder at all, or that he is not

the holder of so large an amount of stock as is alleged, or that he has discharged his liability, or that he has a claim against the corporation which he may, in law or equity, set off against the claim or judgment in assessment, or he may make any other defense which is personal to himself. The order of assessment is, under section 5, conclusive upon all of the stockholders, so far as it decides the amount of assets and liabilities of the corporation before the court, and is conclusive as to the necessity of making an assessment to the extent and in the amount ordered."

This construction was adopted by this court in the Bernheimer case. We quote from pages 532 and 533 of the decision:

"It is said that the stockholder is held liable in a proceeding to which he is not a party. Under the prior act he could only be held where service could be had upon him personally, but if we are right in the proposition just announced, that additional remedies may be provided by legislation, then the validity of such additional enactments depends not necessarily upon the personal service upon the stockholder, but upon the fact whether the remedy provided is a well-recognized means of enforcing such obligations and not in violation of constitutional rights. It is true that the stockholder is not necessarily served with process in the action wherein the assessment is made under the act of 1899, but no personal judgment is rendered against him in that proceeding, and it has reference to a corporation of which he is a member by virtue of his holding stock therein, and the proceeding has for its purpose the liquidation of the affairs of the corporation, the collection and application of its assets and of other liabilities which may be administered for the benefit of creditors. In such case it has been frequently held that the representation which a stockholder has by virtue of his membership in the corporation is all that he is entitled to. It was so held in a well-considered case in Massachusetts, *Howarth v. Lombard*, 175 Massa-

chusetts, 570. And it has been held in cases in this court that when an assessment is necessary to be made upon unpaid stock subscriptions for the benefit of creditors, the court may make the assessment without the presence or personal service of stockholders. *Hawkins v. Glenn*, 131 U. S. 319; *Great Western Tel. Co. v. Purdy*, 162 U. S. 329, 336.

Nor can we see any substantial difference in this respect between a liability to be ascertained for the benefit of creditors upon a stock subscription and the liability for the same purpose which is entailed by becoming a member of a corporation through the purchase of stock whereby a contract is implied in favor of creditors. The object of the enforcement of both liabilities is for the benefit of creditors, and while it is true that one promise is directly to the corporation and the other does not belong to the corporation, but is for the benefit of its creditors, either liability may be enforced through a receiver acting for the benefit of creditors under the orders of a court in winding up the corporation in case of its insolvency."

The Supreme Judicial Court of Massachusetts in *Converse v. Ayer*, at page 100, following the decision of this court, treating the assessment as an interlocutory decree, rendered in the same proceeding in which the receiver was appointed and holding that it was conclusive in the same manner that the decree appointing the receiver was conclusive, and hence not subject to collateral attack, said:

"But this decree (the decree appointing the receiver) would have been fruitless, unless the next step could have been taken, as the company appears to have been hopelessly insolvent. By the interlocutory decree which followed upon the receiver's petition, the court granted this further relief, and being a part of the principal suit this decree is conclusive, even if entered without affording the defendant an opportunity to be personally heard. He still remained a member, and in the proceedings to marshal its property, and to reach and ap-

> ply the further security of his liability, the corporation was so far his agent, that he must be considered as present by representation for the purposes of the suit."

It will be observed that the orders levying the assessments name no person as a stockholder, but merely extend the assessments against any person who may, in proper proceedings, be determined to be a stockholder, and there is reserved to such person, when sued, the right of setoff, or to show that he is not a stockholder, or to make any other defense personal to himself, but by entering into the relation of a stockholder, he has constituted the corporation as his representative, so that an interlocutory decree levying an assessment, made necessary in liquidating the debts of the corporation, is binding upon such person if he is in fact a stockholder, by reason of the fact that his representative, the corporation itself, was present in court. Jurisdiction having regularly attached to such corporation, jurisdiction likewise attached to the stockholder through the corporation.

VI.

UNDER THE DECISION OF THIS COURT IN BERNHEIMER V. CONVERSE AND OTHER CASES DECIDED BY THIS COURT, IT IS CLEAR THAT FULL FAITH AND CREDIT MUST BE GIVEN IN ALL COURTS TO THE INTERLOCUTORY DECREES OF THE DISTRICT COURT OF WASHINGTON COUNTY, MINNESOTA, LEVYING THE ASSESSMENTS IN QUESTION.

Bernheimer v. Converse, supra;
Hawkins v. Glenn, 131 U. S. 319;
Hancock Nat'l Bank v. Farnum, 176 U. S. 640, and cases therein cited.

In the latter case it was held that a stockholder of a Kansas corporation in Rhode Island was conclusively bound by

a judgment rendered in the Kansas Court against the corporation of which he was a member, where the statutes of Kansas contained a provision that:

> "If any execution shall have issued against the property or effects of a corporation, except a railway or a religious or charitable corporation, and there cannot be found any property whereon to levy such execution, then execution may be issued against any of the stockholders to an extent equal in amount to the amount of stock by him or her owned, together with any amount unpaid thereon."

This statute of Kansas was passed pursuant to a provision of the constitution of the state, Sec. 2, Art. XII., reading as follows:

> "Dues from a corporation shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by each stockholder, and such other means as shall be provided by law."

The Hancock National Bank, a creditor of a Kansas corporation recovered a judgment in the United States Circuit Court for the District of Kansas against the corporation. An execution was issued on the judgment and returned unsatisfied. The defendant Farnum, living in Rhode Island, was a stockholder. Suit was brought against such stockholder in the Supreme Court of Rhode Island. Judgment was entered in favor of the defendant upon demurrer. 20 R. I. 466. Justice Brewer, speaking for this court, in his opinion takes up the question as to whether full faith and credit was given to the judicial proceedings in the state of Kansas, when the Supreme Court of Rhode Island refused to enforce this claim against the defendant Farnum. After quoting in his opinion Section 1, Article 4 of the Constitution of the United States, which reads as follows:

> "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof,"

and also quoting section 905 of the Revised Statutes relating to the method of authenticating such proceedings, which concludes with the following words:

> "And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken."

he proceeded to discuss the effect of such constitutional provision and such act of Congress upon the case at issue, as follows:

> "What then is the faith and credit given by law or usage in the courts of Kansas to a judgment against a corporation? What is the effect of such a judgment as there established? This is a question not answered by referring to general principles of law, by determining what at common law was the significance and effect of a judgment, but can be answered only by an examination of the decisions of the courts of Kansas. The law and usage in Kansas, prescribed by its legislature and enforced in its courts, make such a judgment not only conclusive as to the liability of the corporation, but also an adjudication binding each stockholder therein. We do not mean that it is conclusive as against any individual sued as a stockholder that he is one, or if one, that he has not already discharged by payment to some other creditor of the corporation the full measure of his liability, or that he has not claims against the corporation, or judgments against it, which he may, in law or equity, as any debtor, whether by judgment or otherwise, set off against a claim or judgment, but in

other respects it is an adjudication binding him. He is so far a part of the corporation that he is represented by it in the action against it. *Ball v. Reese,* 58 Kansas, 614. In that case it was said, correcting an inference which was sought to be drawn from language in the case of *Howell v. Manglesdorf,* 33 Kansas, 194, in respect to the effect of a judgment against a corporation (pp. 617, 618):

'The general holding in this court has been that a judgment is final and conclusive between the parties and their privies; and we think it must be held that every stockholder in a corporation is so far privy in interest in an action against the corporation that he is bound by the judgment against it. In the absence of fraud and collusion, the judgment must be held to be final and conclusive against the stockholder if the court rendering it has final jurisdiction. As the judgment was valid, the court committed error in allowing the defendant to go behind it and contest matters which were conclusively settled by the judgment against the corporation.'

This representative character of the corporation has been affirmed by this court in several cases. In *Hawkins v. Glenn,* 131 U. S. 319, it was held that 'in the absence of fraud, stockholders are bound by a decree against their corporation in respect to corporate matters, and such a decree is not open to collateral attack.' This was a case in which an assessment ordered by a court which had jurisdiction of the corporation was held binding upon stockholders residing in another state; and in the opinion, on page 329, it was said by Chief Justice Fuller:

'A stockholder is so far an integral part of the corporation that, in the view of the law, he is privy to the proceedings touching the body of which he is a member.'

See also *Glenn v. Liggett,* 135 U. S. 533; *Great Western Telegraph Co. v. Purdy,* 162 U. S. 329, 337.

Now as the judgment rendered in the Kansas court is in that state not only conclusive against the corporation but also binding upon the stockholder, it must, in

> order to have the same force and effect in other states of the union, be adjudged in their courts to be binding upon him, and the only defences which he can make against it are those which he could make in the courts of Kansas. The question to be determined in this case was not what credit and effect are given in an action against a stockholder in the courts of Rhode Island to a judgment in those courts against the corporation of which he is a stockholder, but what credit and effect are given in the courts of Kansas in a like action to a similar judgment there rendered. Thus and thus only can the full faith and credit prescribed by the Constitution of the United States and the act of Congress be secured."

But for the insistence on its position by the Supreme Court of Wisconsin, it would seem but little more need be said than to call attention to the foregoing cases. The constitutional provision requires that full faith and credit shall be given in each state to the judicial proceedings of every other state. That the interlocutory decree levying the assessment is a judicial proceeding cannot be doubted. Under the decisions of this court the stockholders were parties to that proceeding, and were represented in court by the corporation when the interlocutory decree levying the assessment was made. As construed both by this court and by the Supreme Court of Minnesota, this interlocutory decree concludes a defendant when sued as a stockholder, to exactly the same extent that Farnum was concluded by the judgment against the corporation when sued as a stockholder of a Kansas corporation. The language of this court determining the extent to which the judgment against the corporation was conclusive in Kansas, is almost identical with the language of the Supreme Court of Minnesota to which we have heretofore called attention, determining the extent to which the decree levying the assessment is con-

clusive. There was left in the case of the Kansas stockholder the same right to show that he was not a stockholder or that he had discharged his obligation by payment in some manner, or that he had some claim which in law or equity he should have a right to offset. Aside from these defenses personal to himself, the stockholder in Kansas was concluded by the judgment against the corporation, and the stockholder in Minnesota is concluded by the decree levying the assessment. If the full faith and credit clause of the constitution required that the Kansas judgment should be enforced in a proper proceeding against the stockholder, clearly that provision of the constitution requires that the Minnesota decree be enforced against a stockholder under similar circumstances. In the case at bar, therefore, it would seem that the only question is, what is the effect of the assessment in Minnesota?

Under the decisions of the Supreme Court of that state in the cases of *Straw & Ellsworth v. Kilbourne,* 80 Minn. 125, and *London & Northwest American Mortgage Co. v. St. Paul Park Improvement Co.,* 84 Minn. 144, it is settled that the stockholder cannot go behind the assessment, and this court in the Bernheimer case arrived at the same conclusion and reaffirmed it upon the authority of that case, in *Converse v. Bank of Suffield,* 212 U. S. 567. If the defendant in this case had happened to stray across the state line from Wisconsin into Minnesota, no one disputes that the judicial proceedings in question would have concluded her in a suit brought to recover the amount of these assessments.

VII.

THERE IS NO QUESTION OF COMITY IN THIS CASE.

The Wisconsin court has fallen into the error of applying the doctrine of comity between the courts of different states

in a case that is governed by the constitutional provision requiring full faith and credit to be given to the judicial proceedings of another state. A short review of the decisions will show how this error arose.

In *Finney v. Guy*, 106 Wis., 256, the Supreme Court of Wisconsin had under consideration the same case that was afterward heard by this court and is reported by the same title in 189 U. S. 335. At the time that suit was brought, the remedy for the enforcement of stockholders' liability in Minnesota provided by the statutes set forth in the complaint in the case at bar, did not exist, but as thoroughly pointed out and explained by this court in the case of *Hale v. Allinson*, 188 U. S. 56, consisted in a suit in equity to be brought in the courts of Minnesota in which all of the stockholders and all of the creditors were parties, the receiver appointed in such suit being only an ordinary chancery receiver, who, under well recognized rules, has no right as such receiver to maintain an action outside of the jurisdiction appointing him. The Wisconsin court, in *Finney v. Guy*, page 265, (a) pointed out that this was the nature of the remedy and that it was similar to a remedy in the state of Wisconsin, and that the courts in both states had held that such remedy was exclusive;

(b) The court further held that the right was purely statutory, and that the remedy being likewise statutory was clearly intended to be pursued at the home of the corporation, and therefore the right was not transitory;

(c) After discussing some of the Minnesota decisions, one of which was decided by a divided court,—the Wisconsin court agreeing with the minority of the Minnesota court,—it was said:

> "This court recognizes fully the importance of interstate comity and uniformly freely gives effect to it

> as regards the laws of sister states when it will not seriously violate the policy of our own laws or the rights of our own citizens. Tested by that standard and the most liberal rules usually applied to the subject, courts of this state cannot lend their aid in the circumstances presented in the complaint before us. The liberal course in the enforcement of the laws of other states in proper cases should be the rule, but the paramount duty of our judicial system is to safeguard our own state policy and prevent injustice to our own people within reasonable limits." (Pp. 276 and 277.)

The case being brought to this court by a writ of error, judgment was affirmed. The following language was used by this court, naturally resulting from the decision in *Hale v. Allinson:*

> (a) "An examination of the decisions of the Minnesota courts shows that they had held that the remedy provided by the statutes of the state for the enforcement of stockholders' liability was a suit in equity in that state by a creditor in his own behalf and that of all other creditors, against all the stockholders of the corporation, or so many of them as could be served with process, and that it was exclusive, and no other remedy could be availed of even within the jurisdiction of the courts in Minnesota. That being the law of Minnesota it would, of course, prevent an action outside the state by a receiver, as well as by any other plaintiff, to enforce the stockholders' liability. Hence, in the Hale-Allinson case, we held the receiver could not maintain such an action in a foreign jurisdiction and in a federal court. * * * The remedy being exclusive, the statute must be followed and the result is that no other action to enforce the liability can be availed of in another state." (189 U. S. p. 340.)

Having thus ruled as to the nature of the exclusive remedy provided by the Minnesota statutes as they then existed, this court proceeded:

(b) "Nor is this case controlled or covered by *Whitman v. Oxford National Bank*, 176 U. S. 559, and *Hancock National Bank v. Farnum*, 176 U. S. 640. In the former case the special provisions of the Kansas statutes were referred to. It was stated to be the law in Kansas that it only required a judgment against the corporation and an unsatisfied execution returned, after which any creditor could sue any shareholder wherever he could be found. There was no suit in equity in the nature of a partnership accounting necessary. The liability of the shareholder, although statutory in origin, was held contractual in its nature, and under the statute the cause of action was transitory and could be maintained in any tribunal having jurisdiction where process could be served upon the individual shareholder and in such an action the latter could set off debts due him from the company. The Kansas cases, expressing these views, were referred to in the opinion.

In the second case it was again held that under the statute and the decisions of the Kansas courts, after a judgment had been obtained against the corporation and an execution returned unsatisfied, the individual creditor could maintain an action against a single stockholder in any court of competent jurisdiction. Having the right to maintain such action, it was held that when it was commenced in another state and in a proper court thereof, *the judgment which was obtained in Kansas must have the same faith and credit given it in the courts of another state that was given it in Kansas*. Neither case is applicable to the one before us. The statutes are radically different, and no one creditor can maintain the action under the Minnesota statute, and if all unite, they must sue in the courts of that state." (P. 345.) (Italics are ours.)

Having thus held that the receiver had no right protected by the constitution which he could assert in a suit in a jurisdiction foreign to the one in which he was appointed, this court concluded its opinion by saying:

(c) "Whether, aside from the federal considerations just discussed, the Wisconsin court should have permitted this action to be maintained, because of the principle of comity between the states, is a question exclusively for the courts of that state to decide. The right to maintain it under the facts of this case is not founded upon any provision of a federal nature, and we cannot supervise the action of the Wisconsin court in this particular." (Pp. 345-346.)

The next attempt to enforce a Minnesota stockholder's liability in Wisconsin which came before the Supreme Court of that state for consideration, was in the case of *Hunt v. Whewell*, 122 Wis. 33. Hunt, the receiver, was appointed under similar proceedings and had all the powers possessed by the plaintiff in error, Converse, as construed in the decision of this court in *Bernheimer v. Converse*, 206 U. S. 516. The Wisconsin court fell into error in holding that the questions were settled by the decision in the case of *Finney v. Guy*. We quote from the opinion (p. 37):

"This appeal is ruled in favor of respondent by *Finney v. Guy*, 106 Wis. 256, 82 N. W. 595, and *Eau Claire Nat. Bank v. Benson*, 106 Wis. 624, 82 N. W. 604, particularly the former. Every vital question involved here was so thoroughly discussed and the policy of this state in respect thereto so plainly declared in *Finney v. Guy*, and that policy so unqualifiedly sustained by the federal supreme court in the same case in 189 U. S. 335, 23 Sup. Ct. 558, that it seems no useful purpose would be served by going over the matter again."

Having erroneously taken this position the court in the effort to support it, took a view of the law entirely contrary to that adopted by this court in the Bernheimer case. We feel very certain that if the decision in the case of *Bernheimer v. Converse* had been rendered previous to

the trial of the case of *Hunt v. Wheeell*, the Wisconsin court would not have made the rulings that it did. In *Hunt v. Wheeell*, at pages 39 and 40, after discussing in a manner which we, with all respect, cannot consider entirely accurate, the result of the holding in *Finney v. Guy*, the court proceeded:

> "That such a stockholder is not a party to the original suit as to such extraordinary liability merely because the corporation is, since such liability is in no sense an asset of the corporation. Now we face a Minnesota legislative enactment to the effect that the court in such original suit may, in a summary proceeding to which such a stockholder is not a party, fix the amount for which he must respond upon such extraordinary liability, and the time when and the person to whom the same must be paid, and that the determination shall be regarded as a bar to every defense to such liability in any court anywhere. It is hard to conceive of anything more drastic than that. The literal effect thereof is to make the Wisconsin court in this case a mere instrument to execute the commands of a foreign court against one of its citizens in a proceeding to which he was not a party and may not even have had notice of. It is useless to discuss such an unreasonable proposition as that a mere legislative enactment of a state has such extraterritorial force that it can so supplement the authority of its courts as to make their judgments and orders as to persons over which they have no jurisdiction and who reside in another state, binding upon such persons in the courts of such other state, when otherwise they would not be."

A sufficient answer to this rather forcible language of the Wisconsin court will be found in the opinion of this court in the Bernheimer case at page 532, from which we quote:

"We shall proceed to notice some of the specific objections which are urged against the validity of this legislation by stockholders who acquired stock before the act of 1899 went into effect.

It is said that the stockholder is held liable in a proceeding to which he is not a party. * * * *

It is true that the stockholder is not necessarily served with process in the action wherein the assessment is made under the act of 1899, but no personal judgment is rendered against him in that proceeding, and it has reference to a corporation of which he is a member by virtue of his holding stock therein, and the proceeding has for its purpose the liquidation of the affairs of the corporation, the collection and application of its assets and of other liabilities which may be administered for the benefit of creditors. In such case it has been frequently held that the representation which a stockholder has by virtue of his membership in the corporation is all that he is entitled to."

Again, in *Hunt v. Whewell*, the court said (p. 38):

"Our attention is called to *Parker v. Stoughton M. Co.*, 91 Wis. 174, 64 N. W. 751, as analogous to the case before us. To our minds the two cases are widely different. The claim in the former was upon an assessment note belonging to the receiver as the representative of the corporation. It was a corporate asset strictly so called. The liability did not depend upon any statute, nor did the remedy to enforce it. Here the liability is contractual, to be sure, but it is so only by force of the statute. The liability is statutory, the remedy to enforce it is statutory, and the appellant's title is a creature of the statute. The former is strictly transitory; the latter, as regards whether an absolute right or not, is confined to the state of its creation."

This suggestion of the Wisconsin court is again answered by this court in the Bernheimer case, pages 532 and 533:

"Nor can we see any substantial difference in this respect between a liability to be ascertained for the

benefit of creditors upon a stock subscription and the liability for the same purpose which is entailed by becoming a member of a corporation through the purchase of stock whereby a contract is implied in favor of creditors. The object of the enforcement of both liabilities is for the benefit of creditors, and while it is true that one promise is directly to the corporation and the other does not belong to the corporation but is for the benefit of its creditors, either liability may be enforced through a receiver acting for the benefit of creditors under the orders of a court winding up the corporation in case of its insolvency."

We have quoted sufficiently to show the erroneous views entertained by the Wisconsin court upon the decisive questions in the case; but that court concluded its consideration of the questions in *Hunt v. Wheeell* by asserting that in any event the Wisconsin courts had the right to determine whether or not it was contrary to the policy of their laws to allow their citizens to be pursued in the manner provided by the Minnesota statutes, and held that comity did not require that they permit such suit to be maintained. We quote from page 42 of the opinion in 122 Wisconsin:

"This court, in *Finney v. Guy*, 106 Wis., 256, 82 N. W. 595, did not ground its decision on the fact that the receiver did not possess a sufficient title to the claim sought to be enforced to entitle him to the remedy invoked. If it had, the new law of Minnesota might well be said to present a new question. The decision here was grounded on the idea that it is contrary to the policy of our laws to allow our citizens to be pursued in the manner there proposed, and that to permit our courts to be used as desired would inflict injustice upon our people, the protection of whom is the primary duty of such courts. As above indicated, the federal supreme court held this court to be supreme in its own jurisdiction in that field. The new situation, if one is created by the law of 1899, adds force to

what was formerly said as regards the law of comity, liberally applied, not requiring the use of Wisconsin judicial facilities in the manner proposed."

The error into which the court fell was in misconstruing the decision in Finney v. Guy. This court held that the question as to whether comity would require that a Minnesota chancery receiver with no other title be permitted to maintain his suit in the state of Wisconsin was one for the Wisconsin courts to decide; but this was said after holding specifically that under the practice as it then existed in Minnesota, no judicial proceedings were provided which, under the constitution, were entitled to full faith and credit in the Courts of another State.

When the case at bar was brought to the attention of the Wisconsin court it refused to change its ruling in spite of what had been decided in *Bernheimer v. Converse* on account of the rule of *stare decisis*. The opinion, which is very short, was filed in the case of *Converse v. Hamilton*, and in the McCauley case reference is merely made to the same as showing the views of the court. The opinion appears in the record in the Hamilton case No. 211, at page 34. We quote:

"The opinion in *Hunt v. Whewell* covers every phase of this case that it is considered by the court necessary or even advisable to cover here. As far as this court is concerned, the rule of *stare decisis* as to all questions involved, will be applied until a higher tribunal reaches a different conclusion.

In the case of *Bernheimer v. Converse*, 206 U. S. 516, relied upon by appellant's counsel as practically overruling *Hunt v. Whewell*, the question of comity was not involved, was not discussed and was not passed upon in any way. The right to refuse comity was the sole question decided in *Hunt v. Whewell*. The Bernheimer case, therefore, is not in conflict there-

with. For reasons given in *Hunt v. Whewell*, and upon the grounds therein stated, the judgment in this case should be affirmed."

There is a curious likeness between the position of the Wisconsin Court thus announced, and the opinion of the Supreme Court of Rhode Island in the case of *Hancock National Bank v. Farnum*, the decision in which was reversed by this court. We quote from the concluding paragraphs of the opinion of the Supreme Court of Rhode Island in that case, 20 R. I., 466:

> "But a statutory liability may sometimes be prosecuted in another state, and the question arises whether the liability here set out can be so prosecuted. The rule adopted by this court in *O'Reilly v. Railroad Co.*, 16 R. I. 388, 17 Atl. 171, 906, and 19 Atl. 244, is that a right of action created by statute in one state may be prosecuted in another when the two states have statutes relating to the subject which are substantially similar. We do not think that the declaration before us states a case within this rule. Under Gen. Laws R. I. c. 178, § 9, stockholders of a bank are made liable for its debts, and under chapter 180 liabilities are imposed upon stockholders of manufacturing corporations. But the declaration does not aver that the Commonwealth Loan & Trust Company was either of these. If not, this action seeks to enforce a liability against a stockholder which is not enforceable under our laws. The statutes of a state do not operate beyond its own limits, and comity between states does not require that one state should enforce the statutory provisions of another state which are contrary to the policy of its own laws."

The court will see that this is the precise ground taken by the Wisconsin court. But as we have shown above, when the case reached this court, the ruling of the Rhode

Island court was reversed. The judgment of the Kansas court was held to be conclusive against the stockholder, although rendered only against the corporation, and the court swept aside the view that under an alleged discretion determining what comity would permit, the state courts could disregard a provision of the constitution of the United States, and said:

> "The question to be determined in this case was not what credit and effect are given in an action against a stockholder in the courts of Rhode Island to a judgment in those courts against a corporation of which he is a stockholder, but what credit and effect are given in the courts of Kansas in a like action to a similar judgment there rendered? Thus and thus only can the full faith and credit prescribed by the constitution of the United States and the Act of Congress be secured."

So in the case at bar the question is as to the credit and effect given in the courts of Minnesota in a like action to an assessment there ordered by interlocutory decrees such as those attached to the complaint as Exhibits "A" and "B." An approval of the position of the Supreme Court of Wisconsin in this case would be a distinct disavowal of the salutary decision in *Hancock Bank v. Farnum*, and the decisions in many other cases in which the constitutional provision requiring full faith and credit to be given to judicial proceedings of sister states, has been under consideration. It would mean that the right to recover in an action based upon such judicial proceedings would be determined not by the constitution but by the whim or caprice of the courts of the state where the suit was brought. The law of this case is very well stated in the dissenting opinion of Mr. Justice Timlin (Record pp. 34 to 36).

We respectfully submit that the judgment should be reversed.

CORDENIO A. SEVERANCE,
BURR W. JONES,
E. J. B. SCHUBRING,

Attorneys for Plaintiff in Error.

FRANK B. KELLOGG,
ROBERT E. OLDS,

Of Counsel.

Supreme Court of the United States

October Term 1910

No. 43.

THEODORE S. CONVERSE, as Receiver &c. and Successor to Thurston Manufacturing Company,

Plaintiff in Error,

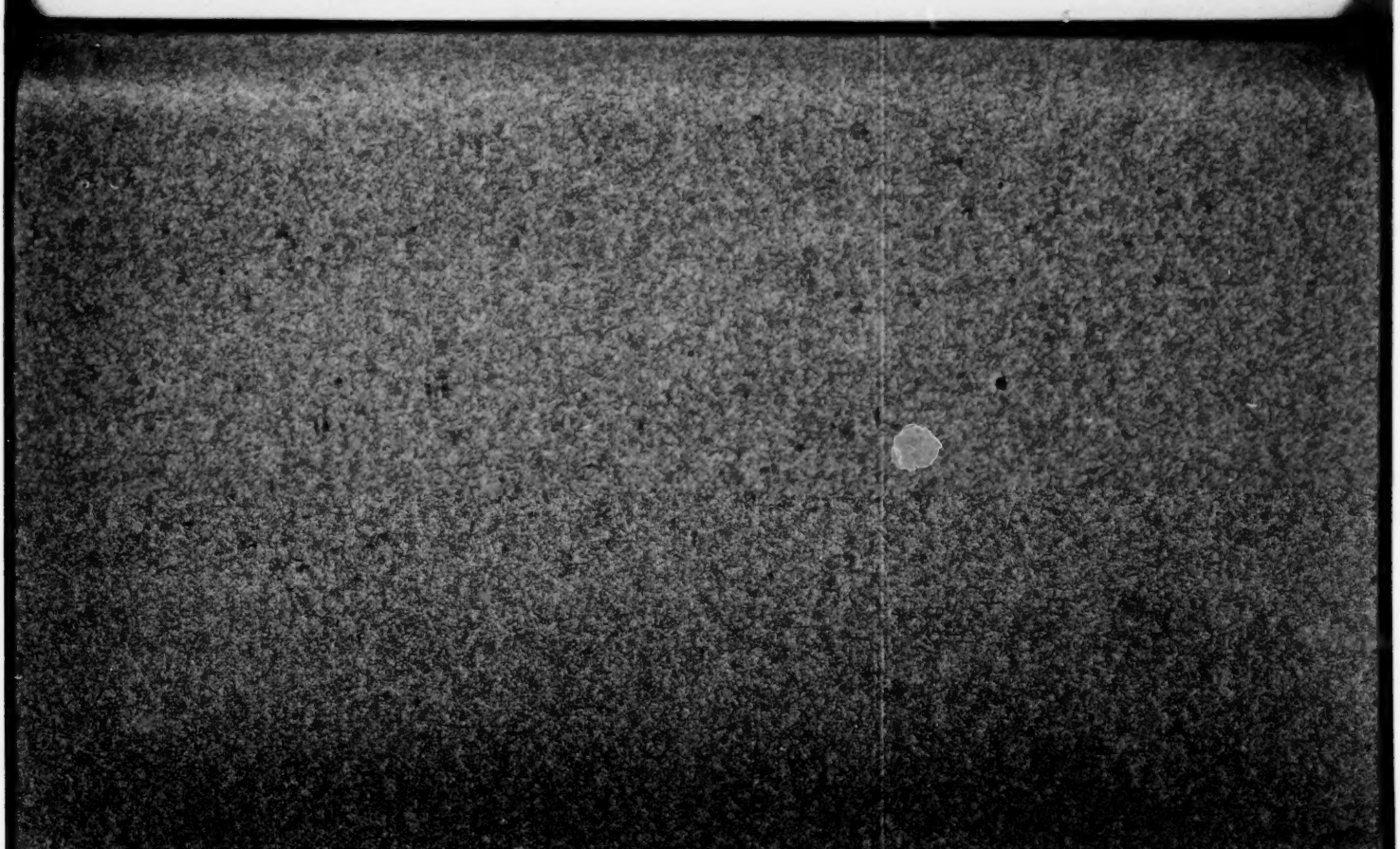
v.

JENEVA S. McCAULEY,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

CHARLES E. BUELL,
Attorney for Defendant in Error.



Supreme Court of the United States

OCTOBER TERM 1910.

No. 212

THEODORE R. CONVERSE, AS RECEIVER OF THE MINNESOTA THRASHER MANUFACTURING COMPANY,
Plaintiff in Error.

v.

JENEVA S. McCAULEY,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF FACTS.

In order that the court may clearly apprehend the exact question raised we shall briefly refer to the material facts in this case.

The Minnesota Thrasher Manufacturing Company was a corporation organized under the laws of the state of Minnesota with a capital stock of $7,000,000.00. Becoming insolvent an action was brought by a creditor to sequester the assets of the corporation in which action Plaintiff in Error was appointed receiver. Creditors were required to file their claims in this action and claims aggregating $443,752.17 were filed and allowed. Upon petition of plaintiff two orders were made levying assessments aggregating 100% upon the capital stock of the corporation and directing plaintiff, in case the same were not paid, to commence actions against the stockholders, either within or without the state of Minnesota to recover such assessments. The defendant was not even a nominal party to the action. No service of notice of such proposed assessment was made upon her, nor did she appear in such action.

The complaint in the action at bar alleges that defendant is a resident of Wisconsin. She was not served with the summons and complaint herein, but her property was attached in Wisconsin, plaintiff claiming the right to commence the action in that manner

under the provision of the Minnesota statute set forth in the complaint.

The defendant demurred to the complaint (Rec. 28) on the grounds:

1. That the court has no jurisdiction of the person of the defendant.

2. That the court has no jurisdiction of the subject of the action.

3. That the plaintiff has no legal capacity to sue in that he is a receiver appointed in an equity action pending in a state court in the state of Minnesota and as such has no extraterritorial jurisdiction.

4. That the complaint does not state facts sufficient to constitute a cause of action.

The demurrer to the complaint was sustained by the trial court and the order sustaining the demurrer was affirmed, upon appeal, by the Supreme Court of Wisconsin. The opinion of the court (Rec. 34) simply states that "this case in all material respects is identical with Converse v. Hamilton, heard herewith, and is controlled thereby." A reference to the Hamilton Case (136 Wis. 589) shows that it was conceded by counsel on both sides that every controverted question therein involved was involved and decided in Hunt v. Whewell, 122 Wis. 33 and for the reasons stated in the opinion in Hunt v. Whewell the judgment of the lower court was affirmed. As the opinion in that case is not printed in the record it is printed here in order that the court may have before it the reasons for the decision in the case at bar and is as follows:

"MARSHALL, J. This appeal is ruled in favor of respondent by Finney v. Guy, 106 Wis. 256, 82 N. W. 595, and Eau Claire Nat. Bank v. Benson, 106 Wis. 624, 82 N. W. 604, particularly the former. Every vital question involved here was so thoroughly discussed and the policy of this state in respect thereto so plainly declared in Finney v. Guy, and that policy so unqualifiedly sustained by the federal supreme court in the same case in 189 U. S. 335, 23 Sup. Ct. 558, that it seems no useful purpose would be served by going over the matter again.

Our attention is called to Parker v. Stoughton M. Co., 91 Wis. 174, 64 N. W. 751, as analogous to the case before us. To our minds the two cases are widely different. The claim in the former was upon an assessment note belonging to the receiver as the representative of the corporation. It was a corporate asset strictly so called. The liability did not depend upon any statute, nor did the remedy to enforce it. Here the liability is contractual, to be sure, but it is so only by force of the statute. The liability is statutory, the remedy

to enforce it is statutory, and appellant's title is a creature of the statute. The former is strictly transitory; the latter, as regards whether an absolute right or not is confined to the state of its creation. These views, thus expressed, have the distinct support of the supreme court of the United States in Hale v. Allison, 188 U. S. 56, 67, 23, Sup. Ct. 244, where it is plaintly indicated that in applying decisions to the two classes of claims, those treating of one class should not be confused with those treating of the other. True, the Massachusetts court, in Howarth v. Lombard, 175 Mass. 570, 56 N. E. 888, held, in effect, that since both classes of liabilities are to be worked out as parts of a common trust fund for the benefit of creditors they should be treated alike as regards the facilities furnished by courts of a state foreign to that of the debtor corporation for the enforcement thereof; that no difference should be made between common-law and statutory liabilities. However, it should be noted that such court plainly there recognized that there is this important distinction between mere statutory rights and others; that the enforcibility of the latter in a state foreign to that of their creation depends upon the law of comity, and that in such field each state is free to establish its own policy unhampered by any outside law, state or national, as indicated in Finney v. Guy, 189 U. S. 335, 345, 23 Sup. Ct. 558.

> "If," said the Massachusetts court, "the statute creating the right is against the policy of the law of the neighboring state, that is a sufficient reason for refusing to enforce the right there. In the neighboring state, in such a case, it will not be considered a right. If the enforcement of the statutory right in a neighboring state in the manner proposed will work injustice to its citizens, considerations of comity do not require the recognition of it by the courts of that state."

That is the precise ground upon which, in the main, it was held in Finney v. Guy that our courts should not be used to coerce our citizens to perform Minnesota obligations in the manner attempted, particular reasons therefor being pointed out, all of which are present in the case before us, with others of an influential character. Then the way was open for the establishment here of precedent facts to the enforcibility of the stockholder's superadded obligation. No judgment, even in form, had been rendered in the Minnesota court, binding upon persons not parties to the litigation,—none which, in terms or by any statute, created an obligation for its recognition in the courts of this state under the "good faith and credit"

clause of the federal constitution, as regards the force to be given to a judgment rendered in the court of one state in the courts of another. It was held here and affirmed by the federal court, that such clause cannot be successfully invoked to bar a resident of this state, who is a stockholder of a Minnesota corporation, the affairs of which are in process of settlement in an administration suit for the benefit of its creditors in a Minnesota Court to, which he is not a party, from litigating in the courts of this state all questions respecting the enforcibility of his extraordinary stockholder's liability where it is sought in such courts to recover thereon by the representative of the creditors appointed by the home court; that such a stockholder is not a party to the original suit as to such extraordinary liability merely because the corporation is, since such liability is in no sense an asset of the corporation. Now we face a Minnesota legislative enactment to the effect that the court in such original suit may, in a summary proceeding to which such a stockholder is not a party, fix the amount for which he must respond upon such extraordinary liability, and the time when and the person to whom the same must be paid, and that the determination shall be regarded as a bar to every defense to such liability in any court anywhere. It is hard to conceive of anything more drastic than that. The literal effect thereof is to make the Wisconsin court in this case a mere instrument to execute the commands of a foreign court against one of its citizens in a proceeding to which he was not a party and may not even have had notice of. It is useless to discuss such an unreasonable proposition as that a mere legislative enactment of a state has such extraterritorial force that it can so supplement the authority of its courts as to make their judgments and orders as to persons over which they have no jurisdiction and who reside in another state, binding upon such persons in the courts of such other state, when otherwise they would not be.

It is conceded that the analysis made here in Finney v. Guy, of the judicial situation in Minnesota, after the decision in Hanson v. Davison, 73 Minn. 454, 76 N. W. 76 N. W. 254, was fully sustained by the federal supreme court; but it is said that Hale v. Allison, 188 U. S. 56, 23 Sup. Ct. 244, where the court spoke most decidedly on the subject, does not govern because of the enactment above mentioned. As evidence thereof it is pointed out that, while the federal supreme court in Hale v. Allison allowed a "writ of certiorari" to the circuit court of appeals of Pennsylvania and sustained the latter in holding that a Minnesota receiver could not, in a court outside of its boundaries, enforce the superadded liability of stockholders, the Minnesota law of 1899 not being involved,—in Burget v. Robinson,

123 Fed. 262, decided in the circuit court of appeals for the district of Massachusetts, precisely the same kind of a case, where such law was involved, a writ applied for to review a judgment of the court of appeals of Massachusetts where the receiver's suit was successfully entertained, was refused. The difficulty with that is this: Hale v. Allison went on the ground that a Minnesota receiver, as the mere arm of the court, unaided by legislative authority, has no title to the claims of creditors of a corporation against its stockholders on account of the latter's extraordinary liability, and therefore cannot sue in a foreign jurisdiction to enforce the same. Having thus effectually disposed of the case, the court proceeded to consider whether a receiver should be permitted to pursue a foreign stockholder in the manner attempted, even if he possessed title to the claim against the latter, on the ground of its preventing a multiplicity of suits, and held to the contrary because no such prevention could thereby be accomplished, all parties concerned not being before court; that the judgment of the Minnesota court was not binding upon the foreign stockholder as to any question concerning his extraordinary liability, because he was not a party to the litigation in such court; that the rule that a stockholder of a corporation is bound by a judgment against it, as in such cases as Parker v. Stoughton M. Co., 91 Wis. 174, 64 N. W. 751, does not apply to proceedings to enforce such extraordinary liability, the latter not being an asset of the corporation; that the suit in a foreign court to enforce the same pursuant to the judgment of the home court is not, properly speaking, ancillary to the main suit, an order or judgment in the latter not being binding upon the foreign stockholder as to such liability who is not a party thereto. Thus it will be seen that the law of comity was not there involved. The real defect in the cause of action was in that the receiver had no title to the liability sought to be enforced. That having been changed by the Minnesota law of 1899 prior to Burget v. Robinson, supra, the federal supreme court refused to interfere with the decision of the circuit court of appeals of Massachusetts, in that case entertaining the receiver's suit against the foreign stockholder. This court, in Finney v. Guy, 106 Wis. 256, 82 N. W. 595, did not ground its decision on the fact that the receiver did not possess a sufficient title to the claim sought to be enforced to entitle him to the remedy invoked. If it had, the new law of Minnesota might well be said to present a new question. The decision here was grounded on the idea that it is contrary to the policy of our laws to allow our citizens to be pursued in the manner there proposed, and that to permit our courts to be used as desired would inflict injustice upon our people, the protection of whom is the primary

duty of such courts. As above inidcated, the federal supreme court held this court to be supreme in its own jurisdiction in that field. The new situation, if one is created by the law of 1899, adds force to what was formerly said as regards the law of comity, liberally applied, not requiring the use of Wisconsin judicial facilities in the manner proposed.

A comparison of the complaint in Finney v. Guy with that before us shows very clearly that no claim is made in the latter not insisted upon in the former. While the law of 1899 is pleaded in the one and not in the other, in both the plea is made that, by its judicial policy independenlty of the new legislation, an ancillary action will lie against the stockholder not brought into the main action by service of process on him, to enforce his extraordinary liability, in which second action the determination in the main suit as to the necessity to enforce such liability, and the extent thereof, is deemed binding upon the theory that the corporation defendant in such main suit stands therein for absent stockholders. The act of legislature under consideration is grounded wholly on that doctrine. Of course, such an enactment can have no greater extraterritorial force than the judgment of a court as to a person over whom it has no jurisdiction. That the purpose of the law of 1899 was merely to accomplish, by a somewhat different way, what was held to be within the power of the courts of Minnesota to accomplish before, to merely change the procedure for the enforcement of the extraordinary liability of corporate stockholders within the lines theretofore set by the judicial policy of the state and the construction of existing statutes, not giving any new right, strictly so called, or varying any old one, is plainly declared in Straw & E. Mfg. Co. v. Kilbourne B. & S. Co., 80 Minn. 125, 83 N. W. 36. It is there said, in effect, that the new law is a mere remedial measure. Obviously, such a measure adopted in one state can add nothing to nor take anything from a right as regards the use of the judicial instrumentalities of another state to enforce it."

The case where the supreme court of Wisconsin goes more fully into the consideration of the reasons why it is against the public policy of that state to permit such an action as the one at bar is Finney v. Guy, 106 Wis. 256 and which was affirmed by this court in 189 U. S. 335.

ARGUMENT.

1. *The question of "full faith and credit" is not involved in this case.*

It is contended by counsel for plaintiff in error that the Wisconsin court in refusing to permit the courts of Wisconsin to be used for the enforcement of this claim has failed to give full faith and credit to the "interlocutory decree" of the Minnesota court in levying the asessment upon the capital stock of the insolvent corporation. A careful consideration of the order making this assessment will demonstrate that it is not such a decree as is contemplated by the Federal Constitution requiring that full faith and credit should be given to it.

The statute in question (Sec. 3) permits the court to consider "by affidavit or otherwise, the proofs "as to the probable indebtedness of the corporation and the expense of said assignment or receivership and the probable amount of assets available for the payment of such indebtedness and expense and also what parties are, or may be, liable as stockholders of said corporation and the nature and extent of such liability and if it appear to the satisfaction of the court that the ordinary assets of said corporation, or such amount as may be realized therefrom within a reasonable time, will probably be insufficient to pay and discharge in full and without delay its indebtedness, and expenses of such assignment or receivership, and that it is necessary or proper that resort be had to such liability of its stockholders the said court shall thereupon, by *order*, direct and levy a rateable assessment upon all parties liable as stockholders, or upon or on acount of any stock or shares of said corporation, for such amount * * * as the court in its discretion may deem proper * * * and shall direct the payment of the amount so assessed" etc. Sec. 5 provides "said *order* and the assessment thereby levied shall be conclusive upon and against all parties liable upon or on account of, any stock or shares of said corporation *whether appearing or represented at said hearing, or having notice thereof or not* as to all matters relating to the amount of, and the propriety of and the necessity for the said assessment.

The statute itself in every section thereof speaks of this merely as an "*order.*" It does not contemplate or assume that it has the force and effect of a decree or judgment against the stockholders but at most that the order is only evidence of facts to be used in case actions are brought against the stockholders because, by Sec. 4 of this act, such order must direct the receiver to commence actions against the stockholders who do not voluntarily pay, to collect the assess-

ment. Such actions the statute provides, may be brought either in the state of Minnesota or elsewhere.

That an assessment made by the court upon the stock of an insolvent Minnesota corporation and upon the stockholders thereof in an action to sequester the assets of the corporation is not such a judgment against the stockholders as to come within the full faith and credit clause of the Federal Constitution was held by this court in Hale v. Allison, 188 U. S. 56. The court on p. 80 says:

> "There remains the further question of maintaining the suit on the ground that it is ancillary, or auxiliary, to the decree of the Minnesota court and aids in its enforcement. We think this contention cannot be sustained.
>
> In the first place all the nonresident stockholders were but nominal parties in the Minnesota suit. Their names were merely placed in its title. No service of process was ever made on one of them and as the suit was not one in which service by publication of process could be ordered, there was nothing in the nature of the suit to give them notice or to enable the court to give judgment against them without their appearing. The court did not assume to give any such judgment. * * * The complainant claims that the non-resident stockholders are bound because the corporation was a party, not because they were parties to the suit. There is no decree or judgment, therefore, against the stockholders who were nonresidents. The claim that they are bound by certain findings of fact by the court, because of the corporation being a party and in law representing them to that extent, assuming it for this purpose to be well founded, is far from transforming a decree against resident stockholders into one against non-residents who were not parties to the action. Even assuming that the decree concludes them upon certain facts found in that action where there was no decree against them, still, another action in another jurisdiction to enforce their liability as originally created by statute cannot, within any reason, be said to be one to enforce the former judgment. *Indeed it is because of the very fact that no judgment was or could be obtained against the non-resident stockholders in the Minnesota suit that the Pennsylvania Federal Court is asked to exercise its jurisdiction and give judgment against the defendants on their statutory liability. This does not make the Pennsylvania suit ancillary to the Minnesota decree for the purpose of enforcing it, for there is no decree against them to be en-*

forced. There is only a claim that they are bound by certain facts found in another action to which they were not parties in any but a merely formal and nominal sense." (Italics our.)

2. *The corporation is not the representative of the stockholder in the sense that it can represent him in making an assessment upon his stock, so as to establish a personal liability.*

Hale v. Allison, *supra.*
Opinion of Canty Justice in Hanson v. Davison, 73 Minn. 454.
Willus v. Mann, 91 Minn. 494.
Lageman v. Casserly, 107 Minn. 491 (494).
Finney v. Guy, 106 Wis. 256.
Danforth v. Chemical Co., 68 Minn. 308.
Schrader v. Manufacturers' Bank, 133 U. S. 67.

It is claimed by counsel for plaintiff in error that the defendant was represented by the corporation itself upon the making of this assessment. This court has spoken in no uncertain tone in Hale v. Allis, *supra*, in the passage just quoted holding that while the corporation may for the purpose of establishing certain evidentiary fact be held to represent the stockholder it does not, or cannot, represent him in any matter relating to his personal liability.

The holding of the Minnesota court is no less uncertain.

In the case of Hanson v. Davison, 73 Minn. 454 Justice Canty in delivering the dissenting opinion of the court says (p. 463):

"Neither can I concur in that part of the opinion which holds that a judgment in an action under Chapter 76 G. S. 1878 determining the amount of corporate debts is conclusive on a stockholder who was not made a party to the action. A judgment taken against the corporation while it was a going concern is conclusive against the stockholders. But a judgment in an action commenced after the assets of the corporation have been sequestered in insolvency proceedings is of no effect against the stockholders. Danforth v. National Chem. Co., 68 Minn. 308; Schrader v. Manufacturers Nat. Bank, 133 U. S. 67, 77. * * * When the corporation is a going concern, it represents all of its stockholders in defending actions brought against it, and that is the reason why stockholders are bound by a judgment taken against it at such a time. But after the corporation goes into liquidation, it ceases to represent its stockholders—at least as to their superadded liability. The majority admit this by admitting that all of

> the stockholders within the jurisdiction are necessary parties to an action to enforce that liability. It is the first time I have ever heard the doctrine laid down by a court that you may neglect to bring in a necessary party to the action and yet bind him as conclusively by the result as if he had been brought in. It seems to me that this is a most extraordinary doctrine."

That this very able opinion states the law as it had been theretofore declared by the Minnesota court is shown by the Wisconsin court in Finney v. Guy, 106 Wis. 256. That it correctly states the law on this point in Minnesota appears from the subsequent decisions of that court.

In Willius v. Mann, 91 Minn. 494, decided since the enactment of chap. 272, laws of 1899, a bank had become insolvent and made an assignment for the benefit of creditors. Thereafter a scheme of reorganization was presented to the court as provided by the Minnesota statute and the bank was reorganized with one-half its former capital. Later on it again became insolvent and a receiver was appointed in an action to sequester the assets of the corporation. On his petition an assessment was made on all the stockholders, old and new, of the bank. On appeal by stockholders of the old bank, who were not stockholders of the new bank, it was contended that the judgment of the court upon the reorganization of the bank continued and preserved the liability of all stockholders, whether stockholders in the new bank or not, they having been represented by the corporation. The court, however, rejects this contention (p. 503) as follows.

> "But it is contended by respondent that the liability of all stockholders, whether members of the new bank or not, was continued and preserved by the judgment adopting and effectuating the plan of reorganization. The portion of the judgment relied upon in support of the claim expressly provides that none of the stockholders of the bank, past or present, shall in any way, or to any extent, be released from any liability existing at the time of the reorganization. It is clear that this judgment cannot have the force and effect contended for. The sockholders of the old bank who did not become members of the new, such as appellants in the case, were not parties to the reorganization proceedings. They were not served with notice of the pendency of the proceeding, except by publication, which was insufficient to warrant a personal judgment against them, and were clearly not bound by the judgment, in so far, at least, as concerns their personal liability.

"It is true that, in proceedings against a corporation, the corporation, when duly summoned and brought into court, represents the stockholders; and all stockholders, in so far as the interests and affairs of the corporation are concerned are bound by the judgment of the court. But the stockholders are not bound by any such judgment as respects their individual interests or liability. * * *

"The case of Holland v. Duluth, Minn. & Dev. Co., 65 Minn. 324, does not sustain respondent's contention. It was held in that case that the stockholders were bound by a judgment against the corporation as to the liability of the corporation and the amount of the recovery, but the individual liability of the stockholder was in no way involved in the action. The action concerned the affairs of the corporation itself, and not the personal liability of the stockholders."

In Lageman v. Casserly, 107 Minn. 491 (494), an action to collect an assessment from defendant upon his stock liability as a stockholder in the Germania Bank involved in the case of Willus v. Mann, *supra*, the court says: "Willus v. Mann was an action against certain stockholders, of which appellant was not one. * * * For certain purposes the stockholders of the corporation were in court through representation by the corporation, and in so far as the interests and affairs of the corporation are concerned they are bound by the judgment. But they are not bound as respects their individual interests, and, when sued as shareholders, they have a right to assert any defense personal to themselves."

The Wisconsin supreme court in Finney v. Guy, *supra*, p. 274, says:

"It is recognized that it would be unjust to bind a stockholder by an adjudication in an action to which he is not a party; but it is said that such is not the result of the new doctrine because in the first action the corporation stands for all its stockholders who are not present. How that can be is easy to assert, but exceedingly difficult to demonstrate upon principle. The cases cited by the court (Minnesota) do not appear to touch the question, as clearly indicated in the able dissenting opinion of Mr. Justice Canty. We shall not take time to review the authorities which the learned court refers to, to sustain its position on this branch of the case; suffice it to say that they are all cases to enforce corporate rights. * * * Not one is a case to enforce a superadded liability of stockholders to creditors or cases involving any analogous question.

> "The corporation is not made a defendant in the principal action as a representative of the stockholders in any sense. It is joined of necessity only where there are corporate assets which ought to be applied to the payment of the debts. Otherwise it is a proper party, but only for the purpose of establishing against it as a finality the amount of the indebtedness for which the stockholders are liable. As an incident thereto, where there are corporate assets which should be applied to the payment of the indebtedness, the corporation must be brought in for the purpose of sequestering and reaching such assets. If there are no such assets the corporation need not be made a party at all. That has been repeatedly held by this and other courts. Booth v. Dear, 96 Wis. 516; Steeper v. Goodwin, 67 Wis. 577; In re People's L. E. Ins. Co., 56 Minn. 180; Minneapolis B. Co. v. City Bank, 66 Minn. 441."

Again at p. 277 the court says:

> "The doctrine of the Hanson case, 73 Minn. 454, is not sustained, in its main features, in the home court, upon any other theory than that the corporation in the original action stands for all the absent members, and that a judgment as to it, after it has ceased to exist for any practical purpose, concludes such absent members on questions in which the corporation has no interest and as to which it is not bound to protect their interest."

In Hale v. Allison, *supra*, this court carefully considers and rejects the principle claimed to have been established in the majority opinion of the Minnesota court in the case of Hanson v. Davison.

In Danforth v. Chemical Co., 68 Minn. 308, where an action was brought to sequested the assets of an insolvent corporation and thereafter a judgment was obtained by default against the corporation the court in an action brought on a claim against the corporation recognized the principle for which we contend and held that a complaint, filed by such judgment creditor, in an action to sequester the assets of the corporation which complaint was based solely upon such judgment recovered in the action brought by such judgment creditor against the corporation, did not state a cause of action against such corporation.

In Schrader v. Manufacturers Bank, 133 U. S. 67 (76–7) it was held that a judgment obtained against a corporation after it had gone into liquidation was not conclusive and might be re-examined.

3. *It has always been the law of Wisconsin, and was always the law of Minnesota until the enactment of chap. 272, laws of 1899, that*

upon the insolvency of a corporation whose stockholders were subject to a double liability the only remedy the creditors had to enforce that liability was by an action brought by all the creditors or by one or more creditors on behalf of all against the corporation and all of the stockholders to wind up the corporation, sequester its assets and enforce the double liability of the stockholders and that the judgment as to such double liability bound only such of the stockholders as could be personally served with process within the jurisdiction of the court or should voluntarily appear in the action and that no other action could be brought to enforce such liability either in the state in which the insolvent corporation was located or elsewhere.

In re Martin's Estate, 56 Minn. 420.
Allen v. Walsh, 25 Minn. 543.
Merchants National Bank v. Bailey Mfg. Co., 34 Minn. 323.
Minneapolis Base Ball Co. v. City Bank, 66 Minn. 441.
Hanson v. Davison, 73 Minn. 454.
Coleman v. White, 14 Wis. 700.
Cleveland v. Marine Bank, 17 Wis. 545.
Merchants Bank v. Chandler, 19 Wis. 434.
Terry v. Chandler, 23 Wis. 456.
Hurlbut v. Marshall, 62 Wis. 590.
Gianella v. Biglow, 96 Wis. 185.
Booth v. Dear, 96 Wis. 516.
Gager v. Marsden, 101 Wis. 598.
Foster v. Posson, 105 Wis. 99.
Finney v. Guy, 106 Wis. 256.
Eau Claire Nat. Bank v. Benson, 106 Wis. 624.
Hunt v. Whenell, 122 Wis. 33.
Hale v. Allison, 188 U. S. 56.
Finney v. Guy, 189 U. S. 335.

The reasons for this rule are stated by the Minnesota court in In re Martin's Estate, *supra*, pp. 422-3, and by the Wisconsin court in Finney v. Guy and Hunt v. Whenell, *supra*. The Minnesota court attempted, in the case of Hanson v. Davison, to establish the doctrine that an ancillary action might be brought either in that state or elsewhere against stockholders not originally served with process in the action to sequester the assets of the corporation but this court, in the case of Finney v. Guy, *supra*, p. 344, analyzed the Minnesota decisions showing that the law of Minnesota and Wisconsin had always been as stated at the head of this subdivision of this brief and that the opin-

ion in the Hanson case "is only the opinion of the very able judge who gave it, upon an abstract proposition," etc.

4. *Chapter 272, laws of Minnesota for the year 1899, and the amendments thereto have not changed the legal aspect of this case.*

Every question raised by counsel for paintiff in error in this case was raised and insisted upon both in the Wisconsin supreme court and in this court in the Finney case and decided adversely to such contention.

It is claimed by counsel that the Minnesota legislature has since the decision of the Finney case specifically authorized the receiver appointed in an action to sequester the assets of an insolvent corporation to commence an action against any stockholder to recover the amount of any stock assessment either in Minnesota or elsewhere; further that under the law as it now stands the receiver is also the representative of the creditors, having the right of an assignee to their legal right to have an assessment ordered upon the stockholders' liability.

In reference to the first point we would say that the questions in this case as in the Finney case, arise as matters pleading upon the sufficiency of the complaint. It is alleged in the complaint at bar that it is the law of Minnesota that an action will lie either in Minnesota, or elsewhere, to enforce the double liability of a stockholder who was not a party to the original action to sequester the assets of the corporation. Such was also the allegation of the complaint in Finney v. Guy (106 Wis., pp. 258–260). In Hunt v. Whenell, *supra*, decided by the Wisconsin court since the enactment of the Minnesota law of 1899 and which case, like the Finney case and the case at bar, was decided upon the sufficiency of the complaint upon a demurrer thereto it was urged that since the decision of the Finney case the Minnesota legislature has by chap. 272, laws of 1899, provided a new remedy and hence the Finney case was not in point. In answer to this contention the court in that case says (p. 42):

> "A comparison of the complaint in Finney v. Guy with that before us shows very clearly that no claim is made in the latter not insisted upon in the former. While the law of 1899 is pleaded in the one and not in the other, in both the plea is made that, by construction put upon the law of Minnesota and by its judicial policy independently of the new legislation, an ancillary action will lie against a stockholder not brought into the main action by service of process on him, to enforce his extraordinary liability, in which second action the determination as to the necessity to enforce such liability, and the

extent thereof, is deemed binding on the theory that the corporation defendant in such main suit stands therein for absent stockholders. The act of the legislature under consideration is grounded wholly on that doctrine. Of course, such an enactment can have no greater extraterritorial force than the judgment of a court as to a person over whom it has no jurisdiction. That the purpose of the law of 1899 was merely to accomplish, by a somewhat different way, what was held to be within the power of the courts of Minnesota to accomplish before, to merely change the procedure for the enforcement of the extraordinary liability of corporate stockholders within the lines theretofore set by the judicial policy of the state and the construction of existing statutes, not giving any new right, strictly so called, or varying any old one, is plainly declared in Straw & E. Mfg. Co. v. Kilburne, B. & S. Co., 80 Minn. 125. It is there said in effect that the law is a mere remedial measure. Obviously, such a measure adopted in one state can add nothing to nor take anything from a right as regards the use of the judicial instrumentalities of another state to enforce it."

But it is claimed by counsel that since the enactment of chap. 272, laws of Minnesota for 1899, the receiver appointed in an action to sequester the assets of an insolvent corporation is not only the arm of the court in sequestering the assets of the corporation but that he may, as assignee of the right of the creditors bring an action to enforce the double liability of the stockholders—in other words that he, as representing the creditors, may do what the creditors themselves could do if the action were brought by them. The case of Finney v. Guy would seem to be fatal to such contention. By reference to that case (106 Wis. 260) we find:

"There were further allegations in the complaint showing that the receiver appointed in the creditors' action at the domicile of the corporation, *and all the creditors whose claims were established in such action and entitled to participate in the benefits of the stockholders' liability, are joined as plaintiffs in this action*, that they came to this state after having exhausted all remedies at the domicile of the corporaion for the satisfaction of their claims, that they instituted this action against the defendant stockholder in this state because she could not be reached in the original action, and that this action is ancillary to the action brought at the home of the corporation."

Even if the contention of counsel were correct that the amendment of 1899 wrought a change in the law of Minnesota and gave the receiver, as assignee of the right of the creditors to enforce the stockholders double liability, the right to bring an action therefor, we fail to see how that helps plaintiff's case, for certainly the receiver, as assignee of the right of the creditors to bring such action under the law as now amended could have no greater, or better, right to bring such actions than all the creditors themselves could have had to bring such action under the statute before it was amended and as we have seen in the Finney case decided previous to the amendment of 1899 all the creditors were united with the receiver as plaintiffs in the action to enforce the double liability but the Wisconsin court held that such action could not be maintained and this court, upon writ of error, sustained the Wisconsin court in its decision, holding that no federal question was involved.

The statute of 1899 does not, in terms, make the receiver the assignee of the title of the creditors to the double liability of the stockholders. It simply authorizes him to commence actions to recover upon such liability just as he may commence actions to recover any asset of the corporation. He is simply the arm of the court, appointed for the purpose of liquidating the property of the corporation, winding up its affairs, etc., and the statute of 1899 does not give him any higher right in reference to the double stock liability than he has to the other assets available for the payment of creditors. Indeed, if there is any difference in the character of his right or power in the two classes of cases it is greater in the latter, for as to them he has all the power of a chancery receiver, while as to the former he has no power except that conferred upon him by statutory authority. He may, in either case, sue to recover such asset provided he proceed in the forum where such action is brought according to the remedy provided by that forum and provided further that such action be not against the public policy of the state where brought.

5. *Whether or not a right exists depends on the law of the state where it was created; the remedy for enforcing such right depends upon the law of the forum where it is sought to be enforced.*

Herrick v. Minneapolis & St. Louis Ry. Co., 31 Minn. 11.
Northern Pacific Railroad v. Babcock, 154 U. S. 190 (197).
Marshall v. Sherman, 148 N. Y. 9.
Leucke v. Treadway, 45 Mo. App. 507.

In Marshall v. Sherman, *supra*, the court says that if under any circumstances an action against stockholders of a foreign corporation could be maintained,

> "it must be in such form and by such modes of procedure as like liabilities created under our own statutes are enforced against our own citizens. There is no reason why the plaintiff should be permitted to enforce his debt in this jurisdiction against a citizen of this state in a form of action different from that which a creditor of a domestic corporation may prosecute against a domestic stockholder."

In Leucke v. Treadway, *supra*, it is said that what the remedy against stockholders in a foreign corporation would be in the state in which it is created is not important in determining the form of remedy to be followed in the state where the stockholders reside, but the remedy to be followed will be determined by the law of the forum.

In Herrick v. Minneapolis & St. Louis Ry. Co., 31 Minn. 11 the court in speaking of rights acquired under a statute of another state and their enforcement says:

> "In such case the law of the place where the right was acquired, or the liability was incurred will govern as to the right of action; while all that pertains merely to the remedy will be controlled by the law of the state where the action is brought, and we think the principle the same whether the right of action be *ex contractu* or *ex delicto* * * *.
>
> It is elementary that the remedy is governed by the law of the forum and this is all that is held by the court in support of their opinion."

The language of the above case is cited with approval by this court in Northern Pacific Railroad Co. v. Babcock, 154 U. S. 190 (197).

Plaintiff in this action asks the Wisconsin court to enforce defendant's alleged liability in a form unknown to the Wisconsin court for the enforcement of the rights of its own citizens against stockholders in Wisconsin corporations and when such enforcement would in the judgment of the Wisconsin court result in a miscarriage of justice. The mere statement of the proposition shows the soundness of the position of the Wisconsin court.

6. *A receiver has no extraterritorial jurisdiction or power of official action and is not entitled, as matter of right, to sue in a foreign juris-*

diction; and the refusal of another state to entertain such suit does not amount to failure to give full faith and credit to the laws and judgments of the state of appointment within the meaning of the Federal Constitution.

High on Receivers, Sec. 239.
Booth v. Clark, 17 How. 322.
Filkins v. Nunnemacher, 81 Wis. 91.
Farmers' & Merchants' Ins. Co. v. Needles, 52 Mo. 17.
Brigham v. Luddington, 12 Blatchf. 237.
Hagard v. Durant, 10 Fed. Rep. 471.

In High on Receivers, Sec. 239 the doctrine is thus stated:

"Upon the question of the territorial extent of a receiver's jurisdiction and powers, for the purpose of instituting actions connected with his receivership, the prevailing doctrine, established by the supreme court of the United States and sustained by the weight of authority in various states is that the receiver has no extraterritorial jurisdiction or power of official action, and cannot, as a matter of right, go into a foreign state or jurisdiction and there institute a suit for the recovery of demands due to the person or estate subject to his receivership. His functions and powers for the purposes of litigation, are held to be limited to the courts of the state within which he was appointed, and the principles of comity between nations and states, which recognize the judicial decisions of one tribunal as conclusive in another, do not apply in such a case, and will not warrant a receiver in bringing an action in a foreign court or jurisdiction. * * * And the refusal of a court of a state other than that in which the receiver was appointed to entertain such an action by the receiver does not amount to a failure to give full faith and credit to the laws and judgment of the state of appointment within the meaning of the Federal Counstitution."

In Booth v. Clark, *supra*, the leading case on this subject, the court says:

"He (the receiver) has no extraterritorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court or another jurisdiction, as the judgment creditor

himself might have done, where his debtor may be amenable to the tribunal which the creditor may seek. In those countries of Europe in which foreign judgments are regarded as a foundation for an action, whether it be allowed by treaty stipulations or by comity, it has not yet been extended to a receiver in chancery. In the United States where the same rule prevails between the states as to judgments and decrees, aided as it is by the first section of the fourth article of the constitution, and by the act of congress of May 26th, 1790, by which full faith and credit are to be given in all the courts of the United States, to the judicial sentences of the different states, a receiver under a creditor's bill has not as yet been an actor as such in a suit out of the state in which he was appointed. This court considered the effect of that section of the constitution and of the act just mentioned in McElmoyle and Cohen, 13 Pet. 324–327. But, apart from the absence of any such case, we think that a receiver could not be admitted to the comity extended to judgment creditors without an entire departure from chancery proceedings as to the manner of his appointment, the securities which are taken from him for the performance of his duties and the direction which the court has over him in the collection of the estate of the debtor, and the application and distribution of them. If he seeks to be recognized in another jurisdiction, it is to take the fund there out of it without such court having any control of his subsequent action in respect to it, and without his having even official power to give security to the court, the aid of which he seeks, for his faithful conduct and official accountability. All that could be done upon such an application from a receiver, according to chancery practice, would be to transfer him from the locality of his appointment to that where he asks to be recognized, for the execution of his trust in the last, under the coercive ability of the court; and that it would be difficult to do, where it may be asked to be done, without the court exercising its province to determine whether the suitor, or another person within its jurisdiction, was the proper person to act as receiver."

7. *The statutes of a state have no extraterritorial force. A foreign receiver cannot, as matter of right, maintain an action outside of the state of his appointment. He is often permitted through comity, or the courtesy of a sister state, to maintain an action therein; but never where the courts of such sister state have declared the maintenance of*

such action to be against the public policy of that state or that the rights of its citizens would be thereby jeopardized or impaired.

High on Receivers, Sec. 241.
Comstock v. Frederickson, 51 Minn. 350.
Mercantile National Bank v. MacFarlane, 71 Minn. 497.
Hanson v. Davison, 73 Minn. 454 (455).
Herrick v. Minneapolis & St. Louis Ry. Co., 31 Minn. 11 (13).
New Haven Horse Nail Co. v. Linden Spring Co., 142 Mass. 349.
Post & Co. v. Toledo, Cincinnati & St. Louis Railroad Co., 144 Mass. 345.
Higgins v. Central New England Railroad, 155 Mass. 176.
Howarth v. Lombard, 175 Mass. 570 (573).
Smith v. Mutual Lif eIns. Co., 96 Mass. 336.
Rice v. Hosiery Co., 56 N. H. 114 (127).
Nimick & Co. v. Mingo Iron Works Co., 25 W. Va. 184.
Rover on Interstate Law, 167-8.
Foster v. Glazener, 27 Ala. 391.
Stevens v. Brown, 20 W. Va. 450 (460-1).
Gilman v. Ketchum, 84 Wis. 60.
Sobemheimer v. Wheeler, 45 N. J. Eq. 614.
Disconto Gesellschaft v. Umbreit, 127 Wis. 651.
Bagby v. A. M. & O. R. Co., 86 Pa. St. 291.
Falk v. Jones, 49 N. J. Eq. 484.
Finney v. Guy, 189 U. S. 335 (345).
Rorer on Interstate Law 226.

High on Receivers, Sec. 241 thus states the rule.

"While, as it is thus seen, the courts have generally denied the receiver's extraterritorial right of action as a question of strict right, it has frequently been recognized as a matter of comity. Thus it has been held that receivers of a foreign corporation, appointed in other states, might sue in New York, in their official capacity, *in cases where no detriment would result to citizens of the latter state*, the privilege of thus suing being regarded as rather upon courtesy than upon strict right, and the courts declining to extend their comity so far as to work detriment to citizens of their own state who have been induced to give credit to the foreign corporation. And the same doctrine prevails in Minnesota. * * * Upon similar grounds of comity it is held in Pennsylvania, that

when a receiver is appointed over a railway in another state, the courts of Pennsylvania will recognize his right to property of the railway company in Pennsylvania, *when not in conflict with the rights of citizens of that state.* * * * It is also held in New Jersey, that a New York receiver appointed in proceedings supplementary to execution in behalf of a judgment creditor residing in New Jersey, may maintain an action in the latter state for the recovery of the debtor's property located there, *the rights of no New Jersey creditors being impaired by the proceeding.*"

In Comstock v. Frederickson, *supra*, the Minnesota court says:

"Strictly, the statutory powers of a foreign assignee or receiver cannot *ex proprio vigore* be recognized as having any force or effect here, but, by the comity existing between the states, which is recognized as a part of the common law, effect may be given to titles and powers derived from the laws of another state or country, by the courts of that state, when this can be done *without contravening the laws or policy of the state*, or interferring with the rights of creditors pursuing their remedies under our laws."

In Hanson v. Davison, supra, the Minnesota court expressed the opinion that under the law as it then stood they saw nothing in the statute to preven ta subsequent action by the receiver either in Minnesota or in another state to recover from a stockholder on his double liability "*if the comity of the sister state would permit it.*"

In Herrick v. Minneapolis & St. Louis Ry. Co., *supra*, the Minnesota court says:

"Whenever by either common law or statute, a right of action has become fixed and a legal liability incurred, that liability, if the action be transitory, may be enforced, and the right of action pursued, in the courts of any state which can obtain jurisdiction of the defendant, *provided it is not against the public policy of the laws of the state where it is sought to be enforced. The statute of another state has, of course, no extra-territorial force, but rights acquired under it will always, in comity, be enforced, if not against the public policy of the former.*"

In Finney v. Guy, 189 U. S. 335 (345) this court, after considering the alleged Federal questions involved says:

> "Whether aside from the Federal considerations just discussed, the Wisconsin court should have permitted this action to be maintained, because of the principle of comity between the states is a question exclusively for the courts of that state to decide. The right to maintain it under the facts of this case is not founded upon any provision of a Federal nature and we cannot supervise the action of the Wisconsin court in this particular."

In New Haven Horse Nail Co. v. Linden Spring Co., 142 Mass. 349 an action in which the plaintiff, a Connecticut corporation brought suit against another Connecticut corporation and certain stockholders, residents of Massachusetts to recover from such stockholders the amount of the debt of the latter corporation to the plaintiff corporation the court says (p. 353):

> "The liability of stockholders in a Connecticut corporation must be determined by the laws of that state (citing authorities). That the statutes of a state do not operate extraterritorily, *proprio vigore* will be conceded. How far they should be enforced beyond the limits of the state which has enacted them must depend on several considerations; as whether any wrong or injury will be done to the citizens of the state in which they are sought to be enforced, whether the policy of its own laws will be contravened or impaired, and whether its courts are capable of doing complete justice to those liable to be affected by their decrees."

In Higgins v. Central New England & Western Railroad, 155 Mass. 176 the supreme court of Massachusetts state the grounds upon which the courts of one state entertain an action at law founded upon the statutes of another state as follows:

> "Assuming that the cause of action is one not existing at the common law, but created by the statute of another state, we have seen that it is transitory and that it survives and passes from the deceased to his administrator. When an action is brought upon it here, the plaintiff is not met by any difficulties upon these points. Whether our courts will entertain it depends upon the general principles which are to be applied in determining the question whether actions founded upon the laws of other states shall be heard here. These

principles require that, in cases of other than penal actions, the foreign law, *if not contrary to our public policy, or to abstract justice or pure morals, or calculated to injure the state or its citizens, shall be recognized and enforced here, if we have jurisdiction of all the parties, and if we can see that, consistently with our own forms of procedure and law of trials we can do substantial justice between the parties. If the foreign law is a penal statute, or if it offends our own policy, or is repugnant to justice or to good morals, or is calculated to injure this state or its citizens, or if we have not jurisdiction of parties who must be brought in to enable us to give a satisfactory remedy, or if under our forms of procedure an action here cannot give a substantial remedy, we are at liberty to decline jurisdicton.*" Citing many cases.

In Howarth v. Lombard, 175 Mass. 570 (573), a case in which a receiver of a Washington bank was permitted to recover in Massachusetts upon a stockholder's double liability under the peculiar wording of the Washington statute, there being no public policy of the state of Massachusetts to prevent, the court lays down the principle which should govern courts in determining whether they will permit actions, such as the one at bar, to be brought as follows:

"If the statute creating the right is against the policy of the law of the neighboring state, that is a sufficient reason for refusing to enforce it here. In the neighboring state, in such a case, it will not be considered a right. If the enforcement of a statutory right in a neighboring state in the manner proposed will work inustice to its citizens, considerations of comity do not require the recognition of it by the courts of that state. * * * If it is of such a kind that, with due regard for the interests of the parties, a proper remedy can be given only in the jurisdiction where it is created, it will not be enforced elsewhere."

In Rice v. Hosiery Co., 56 N. H. 127, the court say:

"The laws of a foreign state do not operate beyond its territorial limits *ex proprio vigore* but only *ex comitate*. The courts of a state where the laws of a foreign state are sought to be enforced, will use a sound discretion as to the extent and mode of that comity: they will not permit their tribunals to be used for the purpose of affording remedies which are denied to parties in the jurisdiction of the state that enacted the law and which tend to operate with hardship on heir own citizens and subjects."

In Nimick & Co., v. Mingo Iron Works Co., 25 W. Va., 184, a judgment creditor of an Ohio corporation (in which state there was a double liability on the part of the stockholder) commenced in the West Virvinia court in his own behalf and in behalf of the other creditors an action against an insolvent Ohio corporation and the stockholders resident in West Virginia to ascertain and determine the extent of the personal liability resting upon them for the payment of the debts of the corporation and to enforce payment of the same the court, upon demurrer to the complaint, declined to permit the action to be maintained and in answer to the contention of counsel that as a contract liability was shown on the part of the defendants to pay the additional liability the court should permit the action to be maintained, the court (p. 198) says:

> "It remains for us to consider whether the liability herein declared to exist against the stockholders of the Mingo Iron Works Company is such a liability as can, or ought to be, enforced by the courts of this state against the defendant stockholders who are residents of this state, and who are not amenable to the jurisdiction of the courts of Ohio. It is contended by the counsel for the appellants that as the individual liability of the stockholders arises out of contract, and is not of the nature of a penalty, that upon the principle of comity the courts of this state ought to enforce and give effect to it. It is admitted that in ordinary cases, in matters of contract, where the remedy to be pursued is provided by the common law, and no specific remedy is prescribed by the laws of the place where the contract was made, the courts of one state, *ex comitate*, will entertain jurisdiction and enforce such contract against its own citizens, if there be no statute in force prohibiting them from doing so and the relief sought can be rendered and if it be not against the public policy of the state within which such contract is sought to be enforced. *But the courts of a state where the laws of a foreign state are sought to be enforced, will use a sound discretion as to the extent and mode of that comity.*

Rorer on Inter-state Law 226 says:

> "It is a principal universally recognized, that laws have no extra-territorial force * * * Whenever the *municipal* laws proper of one state are recognized and enforced in another, it is merely by *comity* of the latter, and upon the presumption that they are tacitly adopted as matters of right when not in-

inical to its own laws or policy, or interests of its people. But this comity is never extended to the laws of remedy, but has been generally regarded as extending to matters *ex contractu*, or such torts as are in violation of natural right regarded as such among civilized people. Natural right being that which has the same force among all men."

In Foster vs. Glogener, 27 Ala. 391, the court says:

"It is a well settled principle of international law that every attempt on the part of one nation or state, by its legislation, to grant jurisdiction to its courts over persons or property not within its territory is regarded elsewhere as a mere userpation; and all judicial proceedings, in virtue of it, are held utterly void for every purpose."

In Stevens vs. Brown, *supra*, the court (P. 461) says:

"The effect given to the statutes of one state by the courts of a sister state, so far as they attempt to control the remedy, is wholly an act of comity and not a recognition of a right And this comity will not be recognized, unless there is no reason to the contrary; it is extended only where there is no interest of the citizens of the state or of a sister state seeking to avail themselves of the protection or benefits of the *lex fori* to be injuriously affected by such recognition."

In Hunt vs. Whewell, 22 Wis. 33, the Wisconsin court in speaking of the principle upon which the Finney case was decided by that court says (P. 42):

"This court, in Finney vs. Guy, 106 Wis. 256, did not ground its decision on the fact that the receiver did not possess a sufficient title to the claim sought to be enforced to entitle him to the remedy invoked. If it had, the new law of Minnesota might well be said to present a new question. The decision here was grounded on the idea that it is contrary to the policy of our laws to allow our citizens to be pursued in the manner there proposed, and that to permit our courts to be used as desired would inflict injustice upon our people, the protection of whom is the primary duty of such courts. As above indicated the federal supreme court held this court to be supreme in its own jurisdiction in that field. The new situation, if one is created by the law of 1899, adds force to what was formerly

said as regards the law of comity, liberally applied, not requiring the use of Wisconsin judicial facilities in the manner proposed."

8. *Whether or not a complaint in a state court states a cause of action, no Federal question being involved, is exclusively for the state court to determine.*

This court in the Finney case, 189 U. S. 335 (339) says:

"It is stated by the supreme court of Wisconsin that that state for many years has had a statute for the enforcement of the liability of stockholders in corporations similar to that which exists in Minnesota, and that it had been frequently decided under such statute that an action of the nature of the one at at bar could not be maintained in her courts, *and also that it was against the public policy of Wisconsin to permit it;* that the remedy under the Wisconsin statute was exclusive, and consisted in a suit in equity at the home of the corporation, in the nature of a partnership accounting, the parties to which would be all the creditors or a creditor in his behalf and in behalf of all others similarly situated who would come in and make themselves parties, and the stockholders could be served with process in the state.

"Whether a cause of action is stated in a pleading, is generally to be decided with reference to the law of the state where the action is pending. *If the state court hold that no cause of action is set forth in pleading and that it is against the public policy of the state to permit an action for such a purpose, we should generally hold that there was no federal question involved in such determination. The plaintiffs, however, urge that there is here an exception to that rule founded upon the considerations just stated, and that if under the Minnesota law this action could be maintained, the courts of Wisconsin are bound to entertain jurisdiction to the same extent. It is not, however, the case that every decision regarding the proper construction of the statute of another state, involves a federal question. Where the case turns upon the construction and not the validity of the statute, a decision of that question is not necessarily of a federal character.* Johnson vs. New York Life Insurance Company, 187 U. S. 491, 496."

Again at P. 345 the court says:

> "Whether, aside from the federal considerations just discussed, the Wisconsin court should have permitted this action to be maintained, because of the principle of comity between the states, is a question exclusively for the courts of that state to decide. The right to maintain it under the facts of this case is not founded upon any provision of a federal nature, and we cannot supervise the action of the Wisconsin court in this particular."

In Allen vs. Alleghany Company, 196 U. S. 458 (466) the language last above quoted from Finney vs. Fry is quoted with approval by this court.

9. *The validity of Chap. 272 laws of Minn., for 1899 and the amendments thereto are not drawn in question in this case; hence no federal question is raised.*

The validity of the Minnesota statute in question is not involved in this case. It is true that the Wisconsin court in construing this statute is of opinion that under it no personal judgment can be rendered by the Minnesota court against those stockholders not personally served with process, or who do not voluntarily appear in the action in which construction, as we have heretofore shown in this brief, the supreme court of Minnesota and this court concur. The supreme court of Wisconsin bases its refusal to permit this action to be maintained not upon the invalidity of the Minnesota statute but upon the grounds that allowing such action to be maintained would be a violation of the long established public policy of the state for the reasons specifically set forth in the Finney and Hunt cases and that it would be granting a remedy in favor of the creditors of a Minnesota corporation which it denied to its own citizens under like circumstances. This raises no federal question. Nowhere is there a suggestion that a judgment rendered by the Minnesota court against a stockholder served personally with process would be void.

Where a case turns upon the construction and not upon the valadity of statute of another state it does not necessarily involve a federal question.

Finney v. Guy, 189 U. S. 335 (340).
Johnson v. New York Life Ins. Co., 187 U. S. 491 (496).
Allen v. Alleghany Co., 196 U. S. (463).
Lloyd v. Matthews, 155 U. S. 222.
Banholzer v. New York Life Ins. Co., 178 U. S. 402.
Johnson v. New York Life Ins. Co., 187 U. S. 491.

10. *Upon demurrer to a complaint alleging the law of another state the defendant is not concluded by such allegations: the court will examine the statutes and decisions of such state and determine for itself whether the law is as pleaded.*

Finney v. Guy, 189 U. S. 335 (343–4).
Knickerbocker Trust Co. v. Iselin, 185 N. Y. 54 (58).

In the Finney case this court says:

> "This right and duty of the courts to themselves construe the statutes and decisions are not altered because the law of the foreign state and the various decisions of its courts are alleged to be as set in a pleading which is demurred to instead of being proved upon the trial.
>
> "In this case the statutes, together with the references to the decisions of the state courts are given in the complaint, and the pleader, by making an averment in the form of a fact, assumes to give a meaning to them such as he thinks to be correct, but the duty still remains with the courts to themselves determine from those statutes and decisions what is in truth the law of the foreign jurisdiction. The courts are not concluded by an averment of what is the law in a foreign jurisdiction, contained in a pleading which is demurred to, any more than they would be by the testimony of a witness to the same effect upon a trial; certainly not when the statute upon which the case rests is set forth and the decisions under it are also referred to as evidence of the law. The demurrer does not admit as a fact, that the construction (in the form of an averment of fact) which the pleader may choose to put upon those statutes or decisions is the right conclusion to be drawn from them."

The above citations apply to may of the allegations of the complaint in reference to the Minnesota law. Such allegations are not admitted by the demurrer to the complaint. The court will in each instance look beyond the allegations of the pleader in order to determine what the law of Minnesota is.

11. *There is nothing in any of the cases arising under the amended Minnesota statute and decided by this court since the amendment to the Minnesota law in conflict with the decision of the Wisconsin court in Hunt v. Whenell.*

As stated in plaintiff's brief, four cases previous to those at bar have reached this court arising under the Minnesota statute since enactment of chapter 272, Laws of 1899, viz.: First National Bank of

Ottawa v. Converse, 200 U. S. 425; Bernheimer v. Converse, 206 U. S. 516; Converse v. First National Bank of Suffield, 212 U. S. 567, and Converse v. Stewart. In no one of them was any question raised as to whether the action was against the public policy of the state where brought or whether a remedy was provided by the Minnesota law different from that of the *lex fori*, and which remedy was denied the citizens of the state where such action was brought, or whether this court would compel a state court to entertain such action against its solemn declaration that by so doing it would subject its citizens to great and manifold injustice and hardship.

The case of First National Bank of Ottawa, v. Converse was brought in a Federal court in a state where the public policy of that state would permit such action and a recovery was had in that court, but the judgment was reversed here on the ground that it was void for the reason that the act of the bank in becoming a stockholder in the insolvent Minnesota Threshing Manufacturing Company was *ultra vires* and void—certainly not a conclusive argument as to the conclusiveness of the order levying the assessment on the stock.

The case of Converse v. First National Bank of Suffield went by default in this court, there being no appearance for the defendant in error and no opinion being written in the case.

Converse v. Stewart was dismissed because no Federal question was involved.

Bernheimer v. Converse was an action brought in a Federal court in a state where it was not against the public policy thereof to permit such action, to recover upon the stockholders' double liability under the Minnesota statute. The court says (P. 525):

> "The principal cantentions in these cases are that the act of 1899, above referred to, works such a change in the contract theretofore eisting by virtue of the acquisition of stock in a Minnesota corporation as to impair the obligation thereof and in ways to be hereafter noticed, undertakes to hold a stockholder by judgment rendered without due process of law."

What was said by the court must be considered only with reference to the questions before the court. There is no suggestion in the argument of counsel or in the opinion of the court that it was against the public policy of New York to permit such an action to be brought, and the fact that such question was not raised is conclusive proof that it was not against such policy.

In the case of Howorth v. Angle, 162 N. Y. 179, cited by the court

in the opinion in the Bernheimer case as an authority to the point that plaintiff may maintain the action, the court says:

> "While a foreign receiver cannot sue in this state as a matter of right, still our courts uphold the title of a foreign assignee or receiver upon the principle of comity. If the title is by virtue of a voluntary conveyance or transfer, it is sustained against all, including even domestic creditors; *but if it depends on a foreign statute or judgment, it is sustained against all except domestic creditors.* Every remedy to gather in the assets is afforded, *unless it would interfere with the policy of the state, or impair the rights of its citizens.*"

This court, in the Bernheimer case, held that the legislature might change the remedy for the enforcement of this liability, but that that did not impair the obligation of contract nor deny plaintiff in error "due process of law." Any general statement therein as to the right of the receiver to maintain such action must be read in reference to the point under consideration and cannot prevail against the previous utterances of this court where the point at issue was raised and carefully considered by this court.

Nor does the fact that the supreme court of Massachusetts permitted this plaintiff to recover in the case of Converse v. Ayer militate against the doctrine for which we contend. The Massachusetts court has in many cases (some of which are cited in this brief) held that it will not permit a foreign receiver to prosecute actions against its citizens in cases where it is aganst the public policy of the state, or where, by so doing, injury would result to its citizens. It is only because it is not against such public policy that it permitted the action in the Ayer case.

In the case of Post & Co. v. Toledo, Cincinnati & St. Louis Railroad, 144 Mass. 341 (345), the court says:

> "This court does not take jurisdiction of a suit to enforce this liability of stockholders in a foreign corporation, not because it would be a suit to enforce a penalty, or a suit opposed to the policy of our laws, but because it is a suit against a foreign corporation which involves the relation between it and its stockholders and in which complete justice only can be done by the courts of the jurisdiction where the corporation was created."

In the case of Howarth v. Lombard, 175 Mass. 570, cited by this court in the opinion in the Bernheimer case as an authority for sus-

taining the judgment in that case, the court clearly points out that the Massachusetts court would not have permitted the maintenance of an action by a receiver of a foreign corporation if such action was against its public policy. On page 573 the court says.

> "If the statute creating the right is against the policy of the neighboring state, that is a sufficient reason for refusing to enforce the right here. In the neighboring state, in such a case, it will not be considered a right. If the enforcement of a statutory right in a neighboring state in the manner proposed will work injustice to its citizens, considerations of comity do not require the recognition of it by the courts of that state."

Nor do we think that the case of Hancock National Bank v. Farnum, 176 U. S. 640, is an authority against the principle for which we contend. The constitution and statute of Kansas makes each stockholder in a Kansas corporation personally and separately liable to each creditor of the corporation. Upon the insolvency of the corporation and the return of execution unsatisfied, the creditor may either seize the property of any stockholder and apply it in satisfying his claim, or he may commence an action against such stockholder to recover from him the amount of his claim. The courts have held that there is a contract liability between each stockholder and each creditor. The Farnum action was brought by a creditor of the corporation directly against a stockholder thereof and not by a receiver of the corporation as in the case at bar. The decision of the Rhode Island court seems to have turned largely upon the construction it gave to the Kansas constitution and statutes, and that certain decisions of the Kansas court in stating the law relaing thereto were, in the opinion of the Rhode Island court, *obitur dictum*, and upon the fact that the statutes of Kansas and Rhode Island are not alike. It is true that the court said:

> "The statutes of a state do not operate beyond its own limits, and comity between states does not require that our state should enforce the statutory provisions of another state which are contrary to the policy of its own laws."

But this statement is made at the very end of the opinion and is the only reference to "public policy" in the opinion. The court nowhere points out how the maintenance of such action would offend the policy of the state or result in injury to her inhabitants as is specifically pointed out by the Wisconsin court in the Finney and Hunt cases.

Counsel have nowhere cited a case where this, or any other court, has held that a receiver of a foreign corporation may maintain an ac-

tion in another state to collect upon the double liability of a stockholder where the maintenance of such action is against the public policy of such state, or where it would, in the opinion of the court, seriously inconvenience and injure its citizens, or where, as in the case at bar, such court must give the receiver of a foreign corporation a remedy which it has always denied to a receiver appointed by its own courts in an action to wind up the affairs of the corporation, nor have they cited a case where this court has held that the failure of a state court to permit such action to be brought is a violation of the "full faith and credit" clause of the Federal constitution, nor do we believe such case exists. The cases we have cited—several of which are from the Minnesota court and all from courts of the highest standing—uniformly hold that such receiver cannot maintain such action as a strict right, but only when the public policy of the sister state will permit.

In order to maintain this action not only has the receiver brought a form of action not given to a receiver of a Wisconsin corporation, but under the authority given him by the Minnesota statute he has attached the property of the defendant, claiming to have obtained jurisdiction of the property of the defendant in that way—a remedy which is denied a receiver of a Wisconsin corporation against a resident of Wisconsin in an action to wind up the affairs of an insolvent Wisconsin corporation.

It is unnecessary here to restate the particulars in which the maintenance of this action would offend the public policy of the state of Wisconsin, or injure its citizens. That is done by the Wisconsin court in the very able opinions of Justice Marshall in the Finney and Hunt cases.

The Wisconsin supreme court, which has always maintained a most enviable reputation for ability, integrity and judicial fairness, has, in the Finney, Benson and Hunt cases, most carefully considered every argument and authority that was, or can be, presented in favor of plaintiff in error's contention and has decided upon most exhaustive examination of the principles involved that such contention ought not prevail.

It is respectfully submitted that the judgment of the Wisconsin supreme court was right and should be affirmed.

CHARLES E. BUELL,
Attorney for Defendant in Error.

stockholder becomes liable for the debts of the corporation in amount measured by the par value of his stock.

The liability of stockholders under the Minnesota constitution is not to the corporation but to the creditors collectively; is not penal but contractual; not joint, but several; and the means of its enforcement are subject to legislative regulation.

Under § 272 of the Laws of Minnesota, the receiver of a corporation, the stockholders whereof are subject to double liability, is invested with authority to sue for and collect the amount of the assessment established in the sequestration suit provided by the statute.

A receiver to collect the double liability of stockholders of a Minnesota corporation is more than a mere chancery receiver; he is a *quasi*-assignee, invested with the rights of creditors, and he may enforce the same in any court of competent jurisdiction.

As the statute of Minnesota providing for determining whether stockholders of a corporation of that State are subject to statutory double liability does not preclude a stockholder from showing that he is not a stockholder or from setting up any defense personal to himself, it is not unconstitutional as denying due process of law, but is a reasonable regulation, and the jurisdiction of the court is sustained by the relation of the stockholder to the corporation and his contractual obligation in respect to its debts.

While an ordinary chancery receiver cannot exercise his powers in jurisdictions other than that of the court appointing him, except by comity, one who is a *quasi*-assignee and invested with the rights of his *cestuis que trustent* may sue in other jurisdictions, and his right so to do is protected by the full faith and credit clause of the Federal Constitution.

While there are certain well-recognized exceptions to the full faith and credit clause, especially in regard to the enforcement of penal statutes, the right of a receiver of a Minnesota corporation to sue in the courts of another State to recover the double liability imposed on the stockholders is within the rule, and the courts of the latter State are bound to give full faith and credit to the laws of Minnesota and the judicial proceedings upon which the receiver's title, authority and right to relief are grounded.

136 Wisconsin, 589, reversed.

THE facts, which involve the recognition to be given, under the full faith and credit clause of the Federal Constitution, in the courts of a State of a receiver appointed by the courts of another State and the right of such re-

ceiver to enforce double liability against the stockholders in the former State, are stated in the opinion.

Mr. C. A. Severance, with whom *Mr. Burr W. Jones*, *Mr. E. J. B. Schubring*, *Mr. Frank B. Kellogg* and *Mr. Robert E. Olds* were on the brief, for plaintiff in error:

It was held by the Supreme Court of Minnesota that the manufacturing company was not exclusively a manufacturing or mechanical corporation, and hence the stockholders are liable. *Merchants' National Bank* v. *Minnesota Thresher M. Co.*, 90 Minnesota, 144; *Bernheimer* v. *Converse*, 206 U. S. 516, 524.

The plaintiff receiver under chapter 272 of the General Laws of Minnesota for 1899, and §§ 3184 to 3190, inclusive, of the Revised Laws of 1905, is a representative of the corporation and of its creditors, and has title to the assessments sued upon and is authorized to enforce such assessments by proper proceedings either in that State or elsewhere. *Bernheimer* v. *Converse*, 206 U. S. 516; *Converse* v. *Ayer* (Mass.), 84 N. E. Rep. 98.

Prior to the enactment of chapter 272, the receiver did not have such title, being nothing but the ordinary chancery receiver, and hence he could not maintain an action to recover stockholders' liability outside the State of Minnesota. *Finney* v. *Guy*, 189 U. S. 335; *Hale* v. *Allinson*, 188 U. S. 56; *Finney* v. *Guy*, 106 Wisconsin, 256.

Chapter 272 and §§ 3184 to 3190, Revised Laws of 1905, merely changed and enlarged the remedy for the enforcement of stockholders' liability, and did not change the substantive right, and hence the said laws are constitutional. *Bernheimer* v. *Converse*, 206 U. S. 516; *Converse* v. *Ayer* (Mass.), 84 N. E. Rep. 98; *Straw & Ellsworth* v. *Kilbourne Co.*, 80 Minnesota, 125; *London & Northwest American Mortgage Co.* v. *St. Paul Park Improvement Co.*, 84 Minnesota, 144.

The judgment at law against the thresher company in

the state court of Minnesota and the decree in the subsequent suit based thereon, by which decree the receiver was appointed, cannot be collaterally attacked. Cases *supra* and *Mutual Life Ins. Co.* v. *Phœnix Ins. Co.*, 108 Michigan, 170; *Bank* v. *Lawrence*, 117 Michigan, 669; *Hinckley* v. *Kettle River Co.*, 80 Minnesota, 32; *Parker* v. *Stoughton Mill Co.*, 91 Wisconsin, 181.

Chapter 272 and §§ 3184 to 3190, both declare that assessments levied pursuant to their provisions, which the demurrer admits were followed in this case, are conclusive upon stockholders wherever they may be. *Straw* v. *Kilbourne Co.*, 80 Minnesota, 125, 136; The *Bernheimer Case*, *supra; Converse* v. *Ayer*, 84 N. E. Rep. 100.

Under *Bernheimer* v. *Converse* and other cases decided by this court, full faith and credit must be given in all courts to the interlocutory decrees of the District Court of Washington County, Minnesota, levying the assessments in question. *Hawkins* v. *Glenn*, 131 U. S. 319; *Hancock Nat'l Bank* v. *Farnum*, 176 U. S. 640, and cases therein cited.

There is no question of comity in this case as in *Finney* v. *Guy*, 106 Wisconsin, 256; *S. C.*, 189 U. S. 335; *Hale* v. *Allinson*, 188 U. S. 56.

In *Hunt* v. *Whewell*, 122 Wisconsin, 33, the Wisconsin court erred in holding that the questions were settled by *Finney* v. *Guy*, and so the decision is contrary to *Bernheimer* v. *Converse*.

In the case at bar the question is as to the credit and effect given in the courts of Minnesota in a like action to an assessment there ordered by interlocutory decrees such as those attached to the complaint. An approval of the position of the Supreme Court of Wisconsin in this case would be a distinct disavowal of *Hancock Bank* v. *Farnum*, and the decisions in many other cases in which the constitutional provision requiring full faith and credit to be given to judicial proceedings of sister States, has been

under consideration. It would mean that the right to recover in an action based upon such judicial proceedings would be determined not by the Constitution but by the whim or caprice of the courts of the State where the suit was brought. The law of this case is well stated in the dissenting opinion below of Mr. Justice Timlin.

Mr. Charles E. Buell, with whom *Mr. John B. Sanborn* and *Mr. Chauncey E. Blake* were on the brief, for defendant in error:

The question of "full faith and credit" is not involved in this case.

An assessment made by the court upon the stock of an insolvent Minnesota corporation and upon the stockholders thereof in an action to sequester the assets of the corporation is not such a judgment against the stockholders as to come within the full faith and credit clause of the Federal Constitution. *Hale* v. *Allinson*, 188 U. S. 56.

The corporation is not the representative of the stockholder in the sense that it can represent him in making an assessment upon his stock, so as to establish a personal liability. *Hale* v. *Allinson, supra; Hanson* v. *Davison*, 73 Minnesota, 454; *Willus* v. *Mann*, 91 Minnesota, 494; *Lageman* v. *Casserly*, 107 Minnesota, 491; *Finney* v. *Guy*, 106 Wisconsin, 256; *Danforth* v. *Chemical Co.*, 68 Minnesota, 308; *Schrader* v. *Manufacturers' Bank*, 133 U. S. 67.

It has always been the law of Wisconsin, and was always the law of Minnesota until the enactment of chapter 272, Laws of 1899, that upon the insolvency of a corporation whose stockholders were subject to a double liability the only remedy the creditors had to enforce that liability was by an action brought by all the creditors or by one or more creditors on behalf of all against the corporation and all of the stockholders to wind up the corporation, sequester its assets and enforce the double liability of the

stockholders and that the judgment as to such double liability bound only such of the stockholders as could be personally served with process within the jurisdiction of the court or should voluntarily appear in the action and that no other action could be brought to enforce such liability either in the State in which the insolvent corporation was located or elsewhere. *In re Martin's Estate*, 56 Minnesota, 420; *Allen* v. *Walsh*, 25 Minnesota, 543; *Merchants' Bank* v. *Bailey Mfg. Co.*, 34 Minnesota, 323; *Minneapolis Base Ball Co.* v. *City Bank*, 66 Minnesota, 441; *Hanson* v. *Davison*, 73 Minnesota, 454; *Coleman* v. *White*, 14 Wisconsin, 700; *Cleveland* v. *Marine Bank*, 17 Wisconsin, 545; *Merchants' Bank* v. *Chandler*, 19 Wisconsin, 434; *Terry* v. *Chandler*, 23 Wisconsin, 456; *Hurlbut* v. *Marshall*, 62 Wisconsin, 590; *Gianella* v. *Biglow*, 96 Wisconsin, 185; *Booth* v. *Dear*, 96 Wisconsin, 516; *Gager* v. *Marsden*, 101 Wisconsin, 598; *Foster* v. *Posson*, 105 Wisconsin, 99; *Finney* v. *Guy*, 106 Wisconsin, 256; *Eau Claire Nat. Bank* v. *Benson*, 106 Wisconsin, 624; *Hunt* v. *Whewell*, 122 Wisconsin, 33; *Hale* v. *Allinson*, 188 U. S. 56; *Finney* v. *Guy*, 189 U. S. 335.

Chapter 272, Laws of Minnesota for the year 1899, and the amendments thereto have not changed the legal aspect of this case.

Whether or not a right exists depends on the law of the State where it was created; the remedy for enforcing such right depends upon the law of the forum where it is sought to be enforced. *Herrick* v. *Minneapolis & St. Louis Ry. Co.*, 31 Minnesota, 11; *Northern Pacific Railroad* v. *Babcock*, 154 U. S. 190, 197; *Marshall* v. *Sherman*, 148 N. Y. 9; *Leucke* v. *Treadway*, 45 Mo. App. 507.

A receiver has no extraterritorial jurisdiction or power of official action and is not entitled, as matter of right, to sue in a foreign jurisdiction; and the refusal of another State to entertain such suit does not amount to failure to give full faith and credit to the laws and judgments of the

State of appointment within the meaning of the Federal Constitution. High on Receivers, § 239; *Booth* v. *Clark*, 17 How. 322; *Filkins* v. *Nunnemacher*, 81 Wisconsin, 91; *Farmers' & Merchants' Ins. Co.* v. *Needles*, 52 Missouri, 17; *Brigham* v. *Luddington*, 12 Blatchf. 237; *Hagard* v. *Durant*, 10 Fed. Rep. 471.

The statutes of a State have no extraterritorial force. A foreign receiver cannot, as matter of right, maintain an action outside of the State of his appointment. He is often permitted through comity, or the courtesy of a sister State, to maintain an action therein; but never where the courts of such sister State have declared the maintenance of such action to be against the public policy of that State or that the rights of its citizens would be thereby jeopardized or impaired. High on Receivers, § 241; *Comstock* v. *Frederickson*, 51 Minnesota, 350; *Mercantile Bank* v. *MacFarlane*, 71 Minnesota, 497; *Hanson* v. *Davison*, 73 Minnesota, 454 (455); *Herrick* v. *Minneapolis & St. Louis Ry. Co.*, 31 Minnesota, 11; *New Haven Nail Co.* v. *Linden Spring Co.*, 142 Massachusetts, 349; *Post & Co.* v. *Toledo &c. R. R. Co.*, 144 Massachusetts, 345; *Higgins* v. *Central N. E. R. R.*, 155 Massachusetts, 176; *Howarth* v. *Lombard*, 175 Massachusetts, 570; *Smith* v. *Mutual Life Ins. Co.*, 96 Massachusetts, 336; *Rice* v. *Hosiery Co.*, 56 N. H. 114, 127; *Nimick & Co.* v. *Mingo Iron Works Co.*, 25 W. Va. 184; Rover on Interstate Law, 167, 226; *Foster* v. *Glazener*, 27 Alabama, 391; *Stevens* v. *Brown*, 20 W. Va. 450 (460, 461); *Gilman* v. *Ketchum*, 84 Wisconsin, 60; *Sobemheimer* v. *Wheeler*, 45 N. J. Eq. 614; *Disconto Gesellschaft* v. *Umbreit*, 127 Wisconsin, 651; *Bagby* v. *A. M. & O. R. Co.*, 86 Pa. St. 291; *Falk* v. *Jones*, 49 N. J. Eq. 484; *Finney* v. *Guy*, 189 U. S. 335 (345).

Whether or not a complaint in a state court states a cause of action, no Federal question being involved, is exclusively for the state court to determine. *Finney Case*, 189 U. S. 335; *Johnson* v. *New York Life Ins. Co.*, 187

U. S. 491, 496; *Allen* v. *Alleghany Co.*, 196 U. S. 458; *Kirtley* v. *Holmes*, 46 C. C. A. 102; 107 Fed. Rep. 1; *Lewis* v. *Clark*, 64 C. C. A. 138; 129 Fed. Rep. 570; *Rogers* v. *Riley*, 80 Fed. Rep. 759; *Burr* v. *Smith*, 113 Fed. Rep. 858.

The validity of chapter 272, Laws of Minnesota for 1899, and the amendments thereto are not drawn in question in this case; hence no Federal question is raised.

Where a case turns upon the construction and not upon the validity of statute of another State it does not necessarily involve a Federal question. *Finney* v. *Guy*, 189 U. S. 335, 340; *Johnson* v. *New York Life Ins. Co.*, 187 U. S. 491, 496; *Allen* v. *Alleghany Co.*, 196 U. S. 463; *Lloyd* v. *Matthews*, 155 U. S. 222; *Banholzer* v. *New York Life Ins. Co.*, 178 U. S. 402; *Johnson* v. *New York Life Ins. Co.*, 187 U. S. 491.

Upon demurrer to a complaint alleging the law of another State the defendant is not concluded by such allegations; the court will examine the statutes and decisions of such State and determine for itself whether the law is as pleaded. *Finney* v. *Guy*, 189 U. S. 335 (343, 344); *Knickerbocker Trust Co.* v. *Iselin*, 185 N. Y. 54 (58).

There is nothing in any of the cases arising under the amended Minnesota statute and decided by this court since the amendment to the Minnesota law in conflict with the decision of the Wisconsin court in *Hunt* v. *Whewell*.

In *First National Bank of Ottawa* v. *Converse*, 200 U. S. 425; *Bernheimer* v. *Converse*, 206 U. S. 516; *Converse* v. *First National Bank of Suffield*, 212 U. S. 565, and *Converse* v. *Stewart*, 218 U. S. 666, no question was raised as to whether the action was against the public policy of the State where brought or whether a remedy was provided by the Minnesota law different from that of the *lex fori*, and which remedy was denied the citizens of the State where such action was brought, or whether this court

would compel a state court to entertain such action against its solemn declaration that by so doing it would subject its citizens to great and manifold injustice and hardship. *Howarth* v. *Angle*, 162 N. Y. 179; *Post & Co.* v. *Toledo, Cincinnati & St. Louis Railroad*, 144 Massachusetts, 341; *Howarth* v. *Lombard*, 175 Massachusetts, 570; *Hancock National Bank* v. *Farnum*, 176 U. S. 640, distinguished. No case holds that the failure of a state court to permit such action to be brought is a violation of the "full faith and credit" clause of the Federal Constitution. The cases cited—several of which are from the Minnesota court and all from courts of the highest standing—uniformly hold that such receiver cannot maintain such action as a strict right, but only when the public policy of the sister State will permit.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

These were actions at law, brought in the Circuit Court of Dane County, Wisconsin, by a receiver of an insolvent Minnesota corporation, the Minnesota Thresher Manufacturing Company, to enforce an asserted double liability of two of its stockholders. The facts stated in the complaints, which were substantially alike, were these: A judgment creditor, upon whose judgment an execution had been issued and returned *nulla bona*, commenced a suit against the company in the District Court of Washington County, Minnesota, for the sequestration of its property and effects and for the appointment of a receiver of the same. The company appeared in the suit, a receiver was appointed, and such further proceedings were had therein, conformably to the statutes of the State, as resulted in the appearance of the creditors of the company, in the presentation and adjudication of their claims aggregating many thousands of dollars, in an ascertainment of

CONVERSE, RECEIVER, *v.* HAMILTON.

SAME *v.* McCAULEY.

ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

Nos. 42, 43. Argued November 7, 1911.—Decided April 1, 1912.

This court looks to the constitution and statutes of a State and the decisions of its courts to determine the nature, extent, and method of enforcing the liability of stockholders of a corporation of that State.

The provisions of the Minnesota constitution imposing double liability on stockholders of corporations other than those carrying on manufacturing or mechanical business is self-executing, and under it each

the complete insolvency of the company and of the necessity of resorting to the double liability of its stockholders for the payment of its creditors, and in orders levying upon its stockholders two successive assessments of 36 and 64 per cent. of the par value of their respective shares, requiring that these assessments be paid to the receiver within stated periods, and directing the receiver, in case any of the stockholders should fail to pay either assessment within the time prescribed, to institute and prosecute all such actions, whether within or without the State, as should be necessary to enforce the assessments. Some of the stockholders intervened in the suit and appealed from the order levying the first assessment, and the order was affirmed by the Supreme Court of the State. 90 Minnesota, 144.

The defendants here were stockholders in the company and failed and refused to pay either assessment, although payment was duly demanded of them. But they were not made parties to the sequestration suit and were not notified, otherwise than by publication or by mail, of the applications for the orders levying the assessments. Upon the expiration of the times prescribed in the orders the receiver brought the present actions to enforce them. The complaints set forth the proceedings in the sequestration suit and the provisions of the Minnesota constitution and statutes relating to the double liability of stockholders and its enforcement, with the interpretation placed upon those provisions by the Supreme Court of that State, and also made the claim that § 1, Art. IV, of the Constitution of the United States and § 905, Rev. Stat., required the courts of Wisconsin to give such faith and credit to those proceedings and provisions as they have by law or usage in the courts of Minnesota.

Demurrers to the complaints were sustained upon the ground that to permit the actions to be maintained in the Wisconsin courts would be contrary to the settled policy

of that State in respect of the enforcement of the like liability of stockholders in its own corporations, and judgments of dismissal were entered accordingly. The judgments were affirmed by the Supreme Court of the State, 136 Wisconsin, 589 and 594, and the receiver sued out these writs of error, alleging that he had been denied a right asserted, as before indicated, under the Constitution and laws of the United States.

Of course, we must look to the Minnesota constitution, statutes and decisions to determine the nature and extent of the liability in question, and the effect given in that State to the laws and judicial proceedings therein looking to its enforcement, and when this is done we find that the situation, as applied to the cases now before us, is as follows:

1. Section 3, article 10, of the Minnesota constitution provides: "Each stockholder in any corporation, excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business, shall be liable to the amount of stock held or owned by him." The insolvent company, before mentioned, is within the general terms of this provision, not the excepting clause. *Merchants' National Bank* v. *Minnesota Thresher Manufacturing Co.*, 90 Minnesota, 144; *Bernheimer* v. *Converse*, 206 U. S. 516, 524. The provision is self-executing, and under it each stockholder becomes liable for the debts of the corporation in an amount measured by the par value of his stock. This liability is not to the corporation but to the creditors collectively, is not penal but contractual, is not joint but several, and the mode and means of its enforcement are subject to legislative regulation. *Willis* v. *Mabon*, 48 Minnesota, 140; *Minneapolis Baseball Co.* v. *City Bank*, 66 Minnesota, 441, 446; *Hanson* v. *Davison*, 73 Minnesota, 454; *Straw & Ellsworth Co.* v. *Kilbourne Co.*, 80 Minnesota, 125; *London & Northwest Co.* v. *St. Paul Co.*, 84 Minnesota, 144; *Bernheimer* v. *Converse, supra.*

2. The proceedings in the sequestration suit, looking to the enforcement of this liability, were had under chapter 272, Laws of 1899, and §§ 3184–3190, Revised Laws of 1905, the latter being a continuation of the former with changes not here material. An earlier statute prescribed a mode of enforcement by a single suit in equity in a home court, which was to be prosecuted by all the creditors jointly, or by some for the benefit of all, against all the stockholders, or as many as could be served with process in the State, and all the rights of the different parties were to be finally adjusted therein. That mode was exclusive. A receiver could not sue on behalf of the creditors in a home court or elsewhere. A single creditor could not sue in his own behalf, and, if all united, or one sued for the benefit of all, it was essential that the suit be in a home court. The statute was so interpreted by the Supreme Court of the State. See *Hale* v. *Allinson*, 188 U. S. 56, and *Finney* v. *Guy*, 189 U. S. 335, where the cases were carefully reviewed. In one of them, *Minneapolis Baseball Co.* v. *City Bank*, *supra*, that court, after holding that the liability could not then be enforced through a suit by a receiver, added: "If it be desirable, in order to secure a speedy, economical and practical method of enforcing the liability, to invest the receiver with such power, it must be done by statute." Doubtless responding to this suggestion, the legislature enacted chapter 272, Laws of 1899. It expressly prescribed the mode of enforcement pursued in the present instance; that is to say, it made provision for bringing all the creditors into the sequestration suit, for the presentation and adjudication of their claims, for ascertaining the relation of the corporate debts and the expenses of the receivership to the available assets, and whether and to what extent it was necessary to resort to the stockholders' double liability, for levying such assessments upon the stockholders according to their respective holdings as should

be necessary to pay the debts, and for investing the receiver with authority to collect the assessments on behalf of the creditors. And it also contained the following provisions respecting the effect to be given to the orders levying assessments and respecting the authority and duties of the receiver (Gen. Laws, 1899, p. 317):

"SEC. 5. Said order and the assessment thereby levied shall be conclusive upon and against all parties liable upon or on account of any stock or shares of said corporation, whether appearing or represented at said hearing or having notice thereof or not, as to all matters relating to the amount of and the propriety of and necessity for the said assessment. This provision shall also apply to any subsequent assessment levied by said court as hereinafter provided.

"SEC. 6. It shall be the duty of such assignee or receiver to, and he may, immediately after the expiration of the time specified in said order for the payment of the amount so assessed by the parties liable therefor, institute and maintain an action or actions against any and every party liable upon or on account of any share or shares of such stock who has failed to pay the amount so assessed against the same, for the amount for which such party is so liable. Said actions may be maintained against each stockholder, severally, in this state or in any other state or country where such stockholder, or any property subject to attachment, garnishment or other process in an action against such stockholder, may be found. . . ."

3. Under this statute, as interpreted by the Supreme Court of the State, as also by this court, the receiver is not an ordinary chancery receiver or arm of the court appointing him, but a *quasi*-assignee and representative of the creditors, and when the order levying the assessment is made he becomes invested with the creditors' rights of action against the stockholders and with full authority to enforce the same in any court of competent

jurisdiction in the State or elsewhere. *Straw & Ellsworth Co.* v. *Kilbourne Co., supra; Bernheimer* v. *Converse, supra.*

4. The constitutional validity of chapter 272 has been sustained by the Supreme Court of the State, as also by this court; and this because (1) the statute is but a reasonable regulation of the mode and means of enforcing the double liability assumed by those who become stockholders in a Minnesota corporation; (2) while the order levying the assessment is made conclusive, as against all stockholders, of all matters relating to the amount and propriety of the assessment and the necessity therefor, one against whom it is sought to be enforced is not precluded from showing that he is not a stockholder, or is not the holder of as many shares as is alleged, or has a claim against the corporation which in law or equity he is entitled to set off against the assessment, or has any other defense personal to himself, and (3) while the order is made conclusive as against a stockholder, even although he may not have been a party to the suit in which it was made and may not have been notified that an assessment was contemplated, this is not a tenable objection, for the order is not in the nature of a personal judgment against the stockholder and as to him is amply sustained by the presence in that suit of the corporation, considering his relation to it and his contractual obligation in respect of its debts. *Straw & Ellsworth Co.* v. *Kilbourne Co., supra; London & Northwest Co.* v. *St. Paul Co., supra; Bernheimer* v. *Converse, supra.*

This statement of the nature of the liability in question, of the laws of Minnesota bearing upon its enforcement, and of the effect which judicial proceedings under those laws have in that State, discloses, as we think, that in the cases now before us the Supreme Court of Wisconsin failed to give full faith and credit to those laws and to the proceedings thereunder, upon which the receiver's right to sue was grounded. It is true that an ordinary chancery

receiver is a mere arm of the court appointing him, is invested with no estate in the property committed to his charge, and is clothed with no power to exercise his official duties in other jurisdictions. *Booth* v. *Clark*, 17 How. 322; *Hale* v. *Allinson*, 188 U. S. 56; *Great Western Mining and Mfg. Co.* v. *Harris*, 198 U. S. 561. But here the receiver was not merely an ordinary chancery receiver, but much more. By the proceedings in the sequestration suit, had conformably to the laws of Minnesota, he became a *quasi*-assignee and representative of the creditors, was invested with their rights of action against the stockholders, and was charged with the enforcement of those rights in the courts of that State and elsewhere. So, when he invoked the aid of the Wisconsin court the case presented was, in substance, that of a trustee, clothed with adequate title for the occasion, seeking to enforce, for the benefit of his *cestuis que trustent*, a right of action, transitory in character, against one who was liable contractually and severally, if at all. The receiver's right to maintain the actions in that court was denied in the belief that it turned upon a question of comity only, unaffected by the full faith and credit clause of the Constitution of the United States, and this view of it was regarded as sustained by the decision of this court in *Finney* v. *Guy*, 189 U. S. 335. But that case is obviously distinguishable from those now before us. It involved the right of a Minnesota receiver and of the creditors of a Minnesota corporation to sue a stockholder in Wisconsin prior to the enactment of chapter 272, and while the earlier statute, before mentioned, provided an exclusive remedy through a single suit in equity in a Minnesota court. That remedy having been exhausted, the receiver and the creditors sought, by an ancillary suit in Wisconsin, to enforce the liability of a stockholder who resided in that State and was not a party to the suit in Minnesota. The Supreme Court of Wisconsin, treating the right to maintain the suit in that

State as depending upon comity only, ruled that it ought not to be entertained. The case was then brought here, it being claimed that full faith and credit had not been accorded to the laws of Minnesota and the proceedings in the suit in that State. This claim was grounded upon a contention that the first decisions in Minnesota, holding that the remedy provided by the earlier statute was exclusive, that a receiver could not sue thereunder, and that the rights of creditors against stockholders must be worked out in the single suit in the home court, had been overruled by later decisions giving, as was alleged, a different interpretation to that statute. The contention was fully considered by this court, the cases relied upon being carefully reviewed, and the conclusion was reached that "the law of Minnesota still remains upon this particular matter as stated in the former cases, which have not been overruled." The claim under the full faith and credit clause was accordingly held untenable, and it was then said: "Whether, aside from the Federal considerations just discussed, the Wisconsin court should have permitted this action to be maintained, because of the principle of comity between the States, is a question exclusively for the courts of that State to decide."

We perceive nothing in the decision in that case which makes for the conclusion that when the representative character, title and duties of a receiver have been established by proceedings in a Minnesota court conformably to the altogether different provisions of the later statute embodied in chapter 272, his right to enforce in the courts of another State the assessments judicially levied in Minnesota depends upon comity, unaffected by the full faith and credit clause. Indeed, the implication of the decision is to the contrary. We say this, first, because had it been thought that the controlling question was one of comity only there would have been no occasion to consider what effect was accorded in Minnesota to the

earlier statute and to the proceedings thereunder, and, second, because especial care was taken to explain that the case in hand was not controlled by the decision in *Hancock National Bank* v. *Farnum*, 176 U. S. 640. That was an action in a Rhode Island court by a creditor of a Kansas corporation against one of its stockholders to enforce the contractual double liability of the latter. The creditor had recovered against the corporation in a court in Kansas a judgment which, according to the laws of that State, invested the creditor with a cause of action against the stockholder which could be asserted in any court of competent jurisdiction. The Supreme Court of Rhode Island, treating the right to maintain the action in that State against the stockholder as dependent upon comity only, and finding that the right with which the creditor was invested under the law of Kansas was unlike that conferred by the law of Rhode Island in like situations, ruled that the action could not be maintained in the courts of that State. 20 R. I. 466. But when the case came here it was held that full faith and credit had not been given to the Kansas judgment upon which the creditor relied, and the judgment of the Supreme Court of Rhode Island was accordingly reversed, it being said in that connection: "The question to be determined in this case was not what credit and effect are given in an action against a stockholder in the courts of Rhode Island to a judgment in those courts against the corporation of which he is a stockholder, but what credit and effect are given in the courts of Kansas in a like action to a similar judgment there rendered. Thus and thus only can the full faith and credit prescribed by the Constitution of the United States and the act of Congress be secured."

In *Bernheimer* v. *Converse*, 206 U. S. 516, the present receiver sought, by reason of the proceedings in the Minnesota court under chapter 272, to maintain an action in New York against a stockholder residing in that State

to enforce one of the assessments before mentioned, and this court sustained the action, saying (p. 534):

"It is objected that the receiver cannot bring this action, and *Booth* v. *Clark*, 17 How. 322; *Hale* v. *Allinson*, 188 U. S. 56, and *Great Western Mining Co.* v. *Harris*, 198 U. S. 561, are cited and relied upon. But in each and all of these cases it was held that a chancery receiver, having no other authority than that which would arise from his appointment as such, could not maintain an action in another jurisdiction. In this case the statute confers the right upon the receiver, as a *quasi*-assignee, and representative of the creditors, and as such vested with the authority to maintain an action. In such case we think the receiver may sue in a foreign jurisdiction. *Relfe* v. *Rundle*, 103 U. S. 222, 226; *Howarth* v. *Lombard*, 175 Massachusetts, 570; *Howarth* v. *Angle*, 162 N. Y. 179, 182."

And in *Converse* v. *First National Bank of Suffield*, 212 U. S. 567, where, in a similar action, the Supreme Court of Errors of Connecticut had given judgment against the receiver, this court reversed the judgment on the authority of *Bernheimer* v. *Converse*, *supra*.

True, the full faith and credit clause of the Constitution is not without well-recognized exceptions, as is pointed out in *Huntington* v. *Attrill*, 146 U. S. 657; *Andrews* v. *Andrews*, 188 U. S. 14, and *National Exchange Bank* v. *Wiley*, 195 U. S. 257, but the laws and proceedings relied upon here come within the general rule which that clause establishes, and not within any exception. Thus, the liability to which they relate is contractual, not penal. The proceedings were had with adequate jurisdiction to make them binding upon the stockholders in the particulars before named. The subject to which chapter 272 is addressed is peculiarly within the regulatory power of the State of Minnesota; so much so that no other State properly can be said to have any public policy thereon. And what the law of Wisconsin may be respecting the

relative rights and obligations of creditors and stockholders of corporations of its creation, and the mode and means of enforcing them, is apart from the question under consideration.

Besides, it is not questioned that the Wisconsin court in which the receiver sought to enforce the causes of action with which he had become invested under the laws and proceedings relied upon, was possessed of jurisdiction which was fully adequate to the occasion. His right to resort to that court was not denied by reason of any jurisdictional impediment, but because the Supreme Court of the State was of opinion that, as to such causes of action, the courts of that State "could, if they chose, close their doors and refuse to entertain the same."

In these circumstances we think the conclusion is unavoidable that the laws of Minnesota and the judicial proceedings in that State, upon which the receiver's title, authority and right to relief were grounded, and by which the stockholders were bound, were not accorded that faith and credit to which they were entitled under the Constitution and laws of the United States.

The judgments are accordingly reversed, and the cases are remanded for further proceedings not inconsistent with this opinion.

Reversed.